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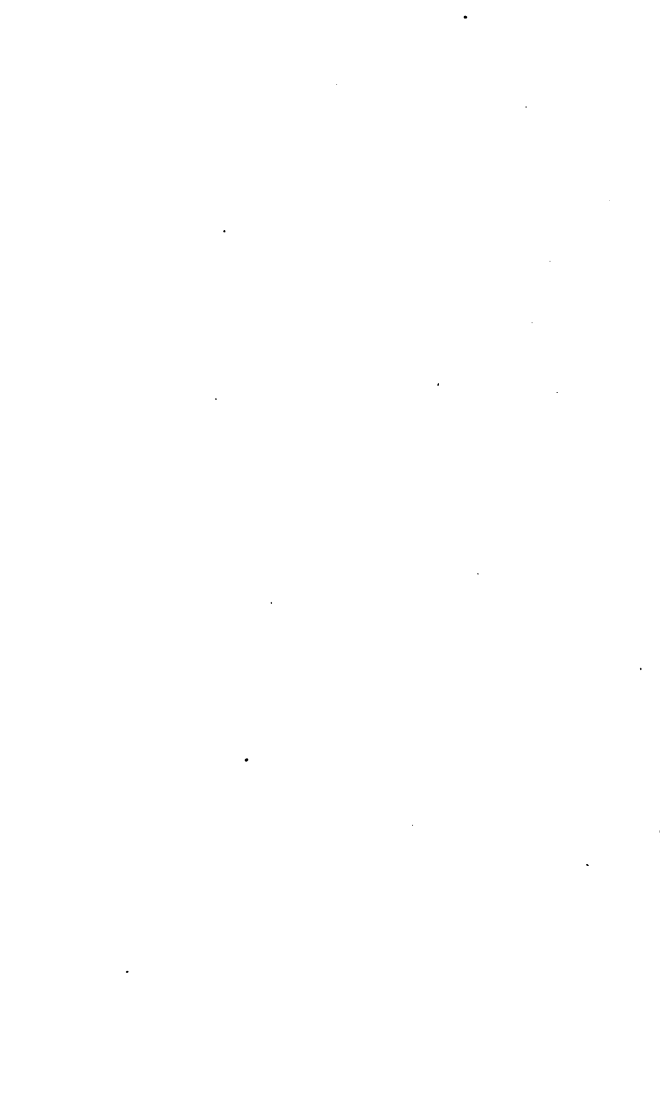
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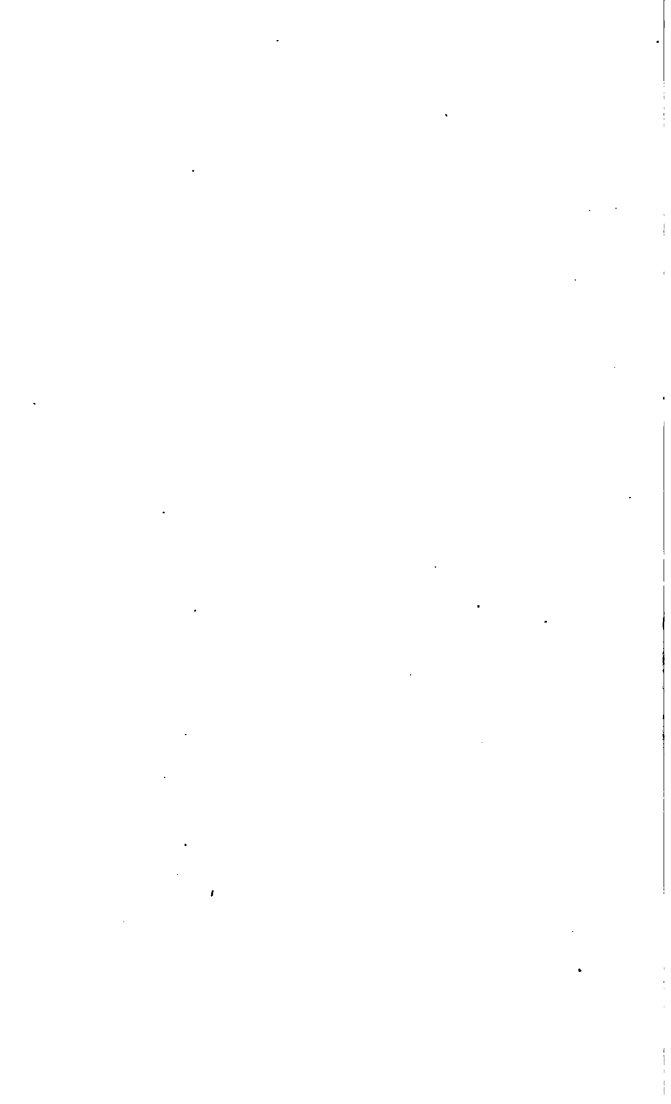
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A

MANUAL OF PRACTICE

IN THE COURTS OF THE

UNITED STATES,

Embracing the Revised Statutes of the United States, relating to
Federal Courts and Practice therein, together with the Rules
and Orders promulgated by the Supreme Court of the United
States, and the latest amendments thereto.

WITH NOTES REFERRING TO

DECISIONS OF THE FEDERAL COURTS.

BY

ROBERT DESTY,

ATTORNEY AT LAW.

Third Thousand.

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PREFACE TO SECOND EDITION.

This little Manual is intended to be a complete compilation of the Statutes and Rules regulating procedure in the Courts of the United States, with notes referring to the decisions construing them. The second edition varies from the first only in the transposition of amendments to their proper places in the sections and the insertion of additional references to cases from the later reports and legal periodicals.

The favorable reception of this work by the profession, and the kind words of commendation and encouragement from Federal Judges, are hereby gratefully acknowledged.

Amendments to Terms of Courts will be found in the Addenda.

Future Amendments to Statutes or Rules will be promptly printed on slips for insertion, and will be forwarded by the publishers or their agents to all purchasers who request them to do so.

San Francisco, April 1st, 1876.



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REVISED STATUTES.



THE REVISED STATUTES OF THE UNITED STATES.

TITLE XIII. THE JUDICIARY.

CHAPTER I. JUDICIAL DISTRICTS.

- SECTION** 530. United States divided into judicial districts.
531. States constituting one district.
532. Alabama.
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§ 530. Judicial Districts.—The United States shall be divided into judicial districts as follows :

§ 531. **States constituting one district.**—The States of California, Connecticut, Delaware, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, Oregon, Rhode Island, Vermont, and West Virginia, each, constitute one judicial district.

Conn. Del. Ky. Me. Md. Mass. N. H. N. J. S. C. 1 U.S.Stat. 78. Cal. 14 U.S.Stat. 300. Ind. 3 U.S.Stat. 390. Kans. 12 U.S.Stat. 128. La. 14 U.S.Stat. 300. Minn. 11 U.S.Stat. 285. Nebr. 15 U.S.Stat. 5. Nev. 13 U.S.Stat. 440. N. C. 1 U.S.Stat. 126; 2 id. 162. Oreg. 11 U.S.Stat. 437. R. I. 1 U.S.Stat. 126. S. C. 3 U.S.Stat. 726. Vt. 1 U.S.Stat. 197. W. Va. 3 U.S.Stat. 478; 4 id. 48; 13 id. 124; 14 id. 350.

§ 532. **Alabama.**—The State of Alabama is divided into three districts, which shall be called the southern, middle, and northern districts of Alabama. The southern district includes the counties of Mobile, Washington, Baldwin, Sumter, Clarke, Marengo, Greene, Pickens, Wilcox, Monroe, and Conecuh. The middle district includes the counties of Montgomery, Autauga, Coosa, Tallapoosa, Chambers, Talledega, Randolph, Macon, Russell, Barbour, Pike, Henry, Dale, Coffee, Covington, Lowndes, Dallas, Perry, Bibb, Shelby, Butler, and Tuscaloosa. The northern district includes the remaining counties of said State.

9 U.S.Stat. 274; 10 id. 5.

§ 533. **Arkansas.**—The State of Arkansas is divided into two districts, which shall be called the eastern and western districts of Arkansas. The western district includes the counties of Benton, Washington, Crawford, Scott, Polk, Franklin, Johnson, Madison, Carroll, Sevier, Sebastian, Phillips, Crittenden, Mississippi, Craighead, Greene, Randolph, Lawrence, Sharp, Poinsett, Cross, Saint Francis, Monroe, Woodruff, Jackson, Independence, Izard, Marion, Fulton, and Boone, and the country lying west of Missouri and Arkansas, known as "The Indian Territory." The eastern district includes the residue of said State. [See § 2153.]

5 U.S.Stat. 51; 9 id. 594; 10 id. 269; 16 id. 472. 5 U.S.Stat. 680; 4 id. 733.

§ 534. **Florida.**—The State of Florida is divided into two districts, which shall be called the northern and southern districts of Florida. The northern district includes all that part of the State lying north of a line drawn due east and west from the northern part of Char-

lotte Harbor. The southern district includes the residue of said State.

5 U.S.Stat. 788; 9 id 131, 132.

§ 535. Georgia.—The State of Georgia is divided into two districts, which shall be called the northern and southern districts of Georgia. The northern district includes the counties of Troup, Meriwether, Pike, Butts, Jasper, Morgan, Greene, Taliaferro, Wilkes, and Lincoln, as they existed August 11th, 1848, with all the counties north of them. The southern district includes the counties of Harris, Talbot, Upson, Monroe, Jones, Putnam, Hancock, Warren, and Columbia, as they existed at said date, with all the counties south of them.

9 U.S.Stat. 280.

§ 536. Illinois.—The State of Illinois is divided into two districts, which shall be called the northern and southern districts of Illinois. The northern district includes the counties of Henderson, Warren, Knox, Peoria, Woodford, Livingston, and Iroquois, as they existed February 13th, 1855, with all the counties north of them. The southern district includes the residue of said State.

10 U.S.Stat. 606; 12 id. 536.

§ 537. Iowa.—The State of Iowa constitutes one district, which shall be called the district of Iowa. For the purpose of trying all issues of fact, triable by jury, in the district court, said district is divided into four divisions, which shall be called the northern, southern, western, and central divisions of the district of Iowa. The northern division includes the counties of Clinton, Jones, Linn, Benton, Tama, Marshall, Grundy, Hardin, and Webster, with all the counties north of them and east of the counties of Calhoun, Pocahontas, Palo Alto, and Emmett, as all of said counties existed March 3d, 1859. The southern division includes the counties of Scott, Cedar, Johnson, Iowa, Poweshiek, Mahaska, Marion, Lucas, Clarke, and Decatur, as they existed at the same date, with all the counties south and east of them. The western division includes the counties of Lyon, Osceola, Sioux, O'Brien, Plymouth, Cherokee, Woodbury, Ida, Monona, Crawford, Harrison, Shelby, Audubon, Pottawatomie, Cass, Mills, Montgomery, Fremont,

and Page. The central division includes the residue of the State.

11 U.S.Stat. 437, 438; 16 id. 174.

§ 538. **Michigan.**—The State of Michigan is divided into two districts, which shall be called the eastern and western districts of Michigan. The western district includes the territory and waters within the following boundaries, as they existed February 24th, 1863, namely: commencing at the southwest corner of Branch County, in said State, and running thence north, on the west line of Branch and Calhoun Counties, to the south line of Barry County; thence east, on the north line of Calhoun and Jackson Counties, to the southeast corner of Eaton County; thence north, on the east boundary of Eaton County, to the south line of Clinton County; thence west, on the south boundary of said county, to the southwest corner thereof; thence north, on the west boundary of Clinton and Gratiot Counties, to the south boundary of Isabella County; thence west, on its south boundary, to the southwest corner of said last named county; thence north, on the west line of Isabella and Clare Counties, to the south boundary of Missaukee County; thence east, on its south boundary, to the southeast corner of Missaukee County; thence north, on the east line of Missaukee, Kalamazoo, and Antrim Counties, to the south boundary of Emmett County; thence east, to the southeast corner of Emmett County; thence north, on the east boundary of Emmett County, to the Straits of Mackinac; thence north, to midway across said straits; thence westerly, in a direct line, to a point on the shore of Lake Michigan where the north boundary of Delta County reaches Lake Michigan; thence west, on the north line of Delta County, to the northwest corner of said Delta County; thence south, on the west boundary of said county, to the dividing line between the States of Michigan and Wisconsin, in Green Bay; thence northeasterly, on said dividing line, into Lake Michigan; and thence southerly, through Lake Michigan, to the southwest corner of the State of Michigan, on a line that will include within said boundaries the waters of Lake Michigan within the admiralty jurisdiction of the State of Michigan; thence east, on the south boundary of the State of Michigan, to the intersection of the west line of Hillsdale County. The east-

ern district includes all the territory and waters of said State not included within the foregoing boundaries.

12 U.S.Stat. 660, 661; 13 id. 143.

§ 539. Mississippi.—The State of Mississippi is divided into two districts, which shall be called the northern and southern districts of Mississippi. The northern district includes the counties of Noxubee, Winston, Attala, Carroll, Belivar, Coahoma, Tunica, De Soto, Marshall, Tippah, Tishemingo, Itawamba, Monroe, Lowndes, Oktibbeha, Choctaw, Yalabusha, Tallahatchee, Panola, La Fayette, Pontotoc, and Chickasaw, as they existed June 18th, 1838. The southern district includes the residue of said State.

5 U.S.Stat. 247.

§ 540. Missouri.—The State of Missouri is divided into two districts, which shall be called the eastern and western districts of Missouri. The eastern district includes the counties of Schuyler, Adair, Knox, Shelby, Monroe, Audrain, Montgomery, Gasconade, Franklin, Washington, Reynolds, Shannon, and Oregon, as they existed January 1st, 1857, with all the counties east of them. The western district includes the residue of said State.

11 U.S.Stat. 197.

§ 541. New York.—The State of New York is divided into three districts, which shall be called the northern, eastern, and southern districts of New York. The northern district includes the counties of Rensselaer, Albany, Schoharie, and Delaware, with all the counties north of them.* The eastern district includes the counties of Richmond, Kings, Queens, and Suffolk, with the waters thereof. The southern district includes the residue of said State, with the waters thereof.

3 U.S.Stat. 120; 3 id. 414; 13 id. 438.

§ 542. Jurisdiction over waters near city of New York.—The district courts of the southern and eastern districts of New York shall have concurrent jurisdiction over the waters within the counties of New York, Kings, Queens, and Suffolk, and over all seizures made and all matters done in such waters; and all processes or orders issued out of either of said courts, or by any judge thereof,

DESY F. PROC. 3.

*"And west" was inserted by amendatory act of Feb. 18th, 1875.

shall run and be executed in any part of the said waters.

13 U.S.Stat. 438.

§ 543. **North Carolina.**—The State of North Carolina is divided into two districts, which shall be called the eastern and western districts of North Carolina. The western district includes the counties of Mecklenburg, Cabarras, Stanly, Montgomery, Richmond, Davie, Davidson, Randolph, Guilford, Rockingham, Stokes, Forsyth, Union, Anson, Caswell, Person, Alamance, Orange, Chatham, Moore, Clay, Cherokee, Swain, Macon, Jackson, Graham, Haywood, Transylvania, Henderson, Buncombe, Madison, Yancey, Mitchell, Watauga, Ashe, Alleghany, Caldwell, Burke, McDowell, Rutherford, Polk, Cleveland, Gaston, Lincoln, Catawba, Alexander, Wilkes, Surry, Iredell, Yadin, and Rowan, and all territory embraced therein which may hereafter be erected into new counties. The eastern district includes the residue of said State.

17 U.S.Stat. 215.

§ 544. **Ohio.**—The State of Ohio is divided into two districts, which shall be called the northern and southern districts of Ohio. The southern district includes the counties of Belmont, Guernsey, Muskingum, Licking, Franklin, Madison, Champaign, Shelby, and Mercer, as they existed February 10th, 1855, with all the counties south of them. The northern district includes the residue of said State.

10 U.S.Stat. 604.

§ 545. **Pennsylvania.**—The State of Pennsylvania is divided into two districts, which shall be called the eastern and western districts of Pennsylvania. The western district includes the counties of Fayette, Greene, Washington, Allegheny, Westmoreland, Somerset, Bedford, Huntingdon, Centre, Mifflin, Clearfield, McKean, Potter, Jefferson, Cambria, Indiana, Armstrong, Butler, Beaver, Mercer, Crawford, Venango, Erie, Warren, Susquehanna, Bradford, Tioga, Union, Northumberland, Columbia, Luzerne, and Lycoming, as they existed April 20th, 1818. The eastern district includes the residue of said State.

3 U.S.Stat. 462; 4 id. 50.

§ 546. **South Carolina.**—The State of South Carolina is divided into two districts, which shall be called

the eastern and western districts of the district of South Carolina. The western district includes the counties of Lancaster, Chester, York, Union, Spartanburgh, Greenville, Pendleton, Abbeville, Edgefield, Newberry, Laurens, and Fairfield, as they existed February 21st, 1823. The eastern district includes the residue of said State.

3 U.S.Stat. 726.

§ 547. **Tennessee.**—The State of Tennessee is divided into three districts, which shall be called the eastern, western, and middle districts of Tennessee. The eastern district includes the counties of Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, McMinn, Marion, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Union, and Washington, as they existed February 19th, 1856. The western district includes the counties of Benton, Carroll, Henry, Obion, Dyer, Gibson, Lauderdale, Haywood, Tipton, Shelby, Fayette, Hardeman, McNairy, Hardin, Perry, Madison, Henderson, and Weakley, as they existed June 18th, 1838. The middle district includes the residue of said State.

5 U.S.Stat. 249; 5 id. 313; 11 id. 1.

§ 548. **Texas.**—The State of Texas is divided into two districts, which shall be called the eastern and western districts of Texas. The eastern district includes the counties of Newton, Jasper, Jefferson, Orange, Tyler, Polk, Liberty, Galveston, Harris, Montgomery, Austin, Fort Bend, Brazoria, Colorado, Wharton, Matagorda, Lavaca, Jackson, Calhoun, De Witt, Victoria, Goliad, Refugio, San Patricio, Nueces, Cameron, Starr, Webb, and Hidalgo, as they existed in 1852. The western district includes the residue of said State.

11 U.S.Stat. 164.

§ 549. **Virginia.**—The State of Virginia is divided into two districts, which shall be called the eastern and western districts of Virginia. The western district includes the counties of Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Floyd, Franklin, Frederick, Fluvanna, Giles, Grayson, Greene, Halifax, Henry,

Highland, Lee, Madison, Montgomery, Nelson, Patrick, Page, Pulaski, Pittsylvania, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Smyth, Shenandoah, Tazewell, Washington, Wise, Wythe, and Warren. The eastern district includes the residue of said State.

16 U.S.Stat. 403.

§ 550. Wisconsin.—The State of Wisconsin is divided into two districts, which shall be called the eastern and western districts of Wisconsin. The western district includes the counties of Rock, Jefferson, Dane, Green, Grant, Columbia, Iowa, La Fayette, Sauk, Richland, Crawford, Vernon, La Crosse, Monroe, Adams, Juneau, Buffalo, Chippewa, Dunn, Clark, Jackson, Eau Claire, Pepin, Marathon, Wood, Pierce, Polk, Portage, Saint Croix, Trempealeau, Douglas, Barron, Burnett, Ashland, and Bayfield. The eastern district includes the residue of said State.

16 U.S.Stat. 171.

CHAPTER II.

DISTRICT COURTS—ORGANIZATION.

- SECTION 551.** District judges, appointment and residence.
 552. Judges in Alabama, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee.
 553. District judge of southern district of Florida.
 554. Salaries of district judges.
 555. Clerks.
 556. Arkansas, western district; clerks.
 557. Kentucky; clerks.
 558. Deputy clerks.
 559. Deputy clerks of the district court in Indiana.
 560. Iowa; deputy clerks.
 561. Compensation of deputy clerks.
 562. Records, where kept.

§ 551. District Judges, appointment and residence.—A district judge shall be appointed for each district, except in the cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

Conn. Del. Md. Mass. N. H. N. J. N. Y. Pa. Me. Va. Ky. 1 U.S.Stat. 73; 2 id. 788. Ark. 5 U.S.Stat. 51. Cal. 14 U.S.Stat. 300. Fla. 5 U.S.Stat. 788; 9 id. 121. Ill. 6 U.S.Stat. 502; 10 id. 607. Ind. 3 U.S.Stat. 390. Iowa 5 U.S.Stat. 789. Kans. 12 U.S.Stat. 128. La. 14 U.S.Stat. 300. Minn. 11 U.S.Stat. 285. Mo. 3 U.S.Stat. 653; 11 id. 198. Mich. 5 U.S.Stat. 62; 12 id. 661. N. Y. 2 U.S.Stat. 710; 3 id. 120; 13 id. 438. Nebr. 15 U.S.Stat. 5. Nev. 13 U.S.Stat. 440. N. C. 1 U.S.Stat. 126; 2 id. 162; 17 id. 217. Ohio 2 U.S.Stat. 201; 10 id. 605. Oreg. 11 U.S.Stat. 437. Pa. 3 U.S.Stat. 462; 4 id. 50. R. I. 1 U.S.Stat. 123. Texas 9 U.S.Stat. 1; 11 id. 165. Vt. 1 U.S.Stat. 197. Va. 16 U.S.Stat. 404. W. Va. 13 U.S.Stat. 124. Wis. 9 U.S.Stat. 57; 16 id. 172.

§ 552. Judges in Alabama, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee.—There shall be appointed in each of the States of Alabama, Georgia, Mississippi, South Carolina, and Tennessee, one district judge, who shall be district judge for each of the districts included in the State for which he is appointed, and shall reside within some one of the said districts. And for offending against this provision, such judges shall be liable as in the preceding section.

1 U.S.Stat. 73; 2 id. 788. Ala. 3 U.S.Stat. 564; 5 id. 315; 4 id. 9; 9 id. 274. Ga. 9 U.S.Stat. 280. Miss. 3 U.S.Stat. 413; 5 id. 247. S. C. 3 U.S.Stat. 726. Tenn. 1 U.S.Stat. 496; 5 id. 250; 5 id. 313.

§ 553. District judge of southern district of Florida.—The district judge for the southern district of Florida shall reside at Key West.

9 U.S.Stat. 131.

§ 554. Salaries of district judges.—District judges are entitled to receive yearly salaries at the following rates, payable quarterly from the Treasury: The judge of the district of California, five thousand dollars; the judge of the district of Louisiana, four thousand five hundred dollars; the judges of the district of Massachusetts; the northern, southern, and eastern districts of New York; the eastern and western districts of Pennsylvania; the district of New Jersey; the district of Maryland; the southern district of Ohio, and the northern district of Illinois, four thousand dollars. The judges of all other districts, three thousand five hundred dollars. No other allowance or payment shall be made to them for travel, expenses, or otherwise. [See §§ 597, 613.]

14 U.S.Stat. 470. Neb. 15 U.S.Stat. 5 Wis. 16 U.S.Stat. 172. Va. 16 U.S.Stat. 404. Ark. 16 U.S.Stat. 472. N. C. 17 U.S.Stat. 217.

§ 555. Clerks.—A clerk shall be appointed for each district court by the judge thereof, except in cases otherwise provided for by law.

1 U.S.Stat. 76; 16 id. 45.

§ 556. Clerks to Arkansas.—In the western district of Arkansas there shall be appointed two clerks of the district court thereof; one of whom shall reside and keep his office at Fort Smith, and the other shall reside and keep his office at Helena.

9 U.S.Stat. 595; 16 id. 472.

§ 557. Clerks to Kentucky.—In the district of Kentucky a clerk of the district court shall be appointed at each place of holding the court, in the same manner and subject to the same duties and responsibilities which are, or may be, provided concerning clerks in independent districts.

12 U.S.Stat. 387; 16 id. 45.

§ 558. Deputy clerks.—One or more deputies of any clerk of a district court may be appointed by the court, on the application of the clerk, and may be removed at the pleasure of judges authorized to make the appoint-

ment. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk, in his name, until a clerk is appointed and qualified; and for the default or misfeasances in office of any such deputy, whether in the life-time of the clerk or after his death, the clerk, and his estate, and the sureties in his official bond, shall be liable; and his executor or administrator shall have such remedy for any such default or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his life-time.

17 U.S.Stat. 330.

§ 559. Deputy clerks to Indiana.—In the district of Indiana the clerk of the district court must appoint a deputy clerk for said court held at New Albany, and a deputy clerk for said court held at Evansville; who shall reside and keep their offices at said places respectively. Each deputy shall keep in his office full records of all actions and proceedings in the district court held at the same place, and shall have the same power to issue all process from the said court that is or may be given to the clerks of other district courts in like cases.

16 U.S.Stat. 473; 16 id. 175; 17 id. 330.

§ 560. Deputy clerks, Iowa.—In the district of Iowa a deputy clerk of the district court shall be appointed at each place in the four divisions of said district where said court is required to be held; each of whom, in the absence of the clerk, may exercise all the official powers of clerk, at the place and within the division for which he is appointed.

9 U.S.Stat. 412; 11 id. 437, 438; 16 id. 174-5; 17 id. 330.

§ 561. Compensation of deputy clerks.—The compensation of deputies of the clerks of the district courts shall be paid by the clerks, respectively, and allowed in the same manner that other expenses of the clerk's offices are paid and allowed.

17 U.S.Stat. 330.

§ 562. Records, where kept.—The records of a district court shall be kept at the place where the court is held. When it is held at more than one place in any district, and the place of keeping the records is not

specially provided by law, they shall be kept at either of the places of holding the court which may be designated by the district judge.

1 U.S.Stat. 73.

CHAPTER III.

DISTRICT COURTS—JURISDICTION.

SECTION 563. Jurisdiction.

564. Certain seizures cognizable in any district into which the property is taken.

565. May proceed in prize causes after appeal.

566. Trial of issues of fact.

567. Transfer of records to district courts when a Territory becomes a State.

568. District judge shall demand and compel delivery of

569. Jurisdiction of district courts in cases transferred from records of territorial court.

570. Commissioners to administer oaths to appraisers.

571. Certain district courts to have circuit court jurisdiction.

§ 563. Jurisdiction.—The district courts shall have jurisdiction as follows:

First. Of all *crimes and offenses* cognizable under the authority of the United States, committed within their respective districts, or upon the high seas, the punishment of which is not capital, except in the cases mentioned in section fifty-four hundred and twelve, Title, "Crimes." [See §§ 4300-4305.]

1 U.S.Stat. 76; 3 id. 245; 5 id. 517; 16 id. 456. *Ex parte Bollman*, 4 Cr. 75; *U. S. v. Hudson*, 7 Cr. 32; *U. S. v. Coolidge*, 1 Wheat. 415; *U. S. v. Bevans*, 3 Wheat. 336.

Second. Of all cases arising under any act for the punishment of *piracy*, when no circuit court is held in the district of such court.

3 U.S.Stat. 789; 3 id. 600; 3 id. 721. *The Palmyra*, 12 Wheat. 1.

Third. Of all suits for *penalties and forfeitures* incurred under any law of the United States.

1 U.S.Stat. 76. *Ketland v. The Cassius*, 2 Dall. 365; *Hall v. Warren*, 2 McLean 332.

Fourth. Of all *suits at common law* brought by the *United States*, or by any officer thereof, authorized by law to sue.

1 U.S.Stat. 76; 3 id. 245. *Parsons v. Bedford*, 3 Pet. 447; *Duncan v. U. S.*, 7 Pet. 450.

Fifth. Of all suits in equity to enforce the lien of the United States upon any real estate for any *internal revenue tax*, or to subject to the payment of any such tax any real estate owned by the delinquent, or in which he has any right, title, or interest. [See § 3207.]

15 U.S.Stat. 167.

Sixth. Of all suits for the recovery of any forfeiture or damages under section 3490, Title "Debts due to or by the United States"; and such suits may be tried and determined by any district court within whose jurisdictional limits the defendant may be found. [See §§ 3490-3494.]

12 U.S.Stat. 698.

Seventh. Of all causes of action arising under the *postal laws* of the United States.

5 U.S.Stat. 739.

Eighth. Of all civil causes of *admiralty* and maritime jurisdiction; saving to suitors in all cases the right of a common law remedy, where the common law is competent to give it; and of all *seizures on land* and on waters not within admiralty and maritime jurisdiction. And such jurisdiction shall be exclusive, except in the particular cases where jurisdiction of such causes and seizures is given to the circuit courts,^(a) and shall have original and exclusive cognizance of all prizes brought into the United States, except as provided in paragraph six of section six hundred and twenty-nine.

1 U.S.Stat. 76; 1 id. 347; 2 id. 70, 71; 2 id. 426, 428; 12 id. 319; 14 id. 111, 145, 152; 14 id. 475, 483; 15 id. 167; 13 id. 239, 240, 305; 13 id. 483.

Possesses all the power of a court of admiralty, as an instance court or as a prize court, *Sloop Betsey*, 3 Dall. 16. Reservations of remedy at common law, *Bingham v. Cabbot*, 3 Dall. 33; *Waring v. Clarke*, 5 How. 452. Jurisdiction not affected by State legislation, *Steamer St. Lawrence*, 1 Black 526; *Steamboat Co. v. Chase*, 16 Wall. 529. Jurisdiction as to contract limited to maritime contracts, *Steamboat Orleans v. Phœbus*, 11 Pet. 184; *De Lovio v. Boit*, 2 Gall. 398. Dependent on nature of contract, *Railroad Co. v. Steam Towboat Co.* 23 How. 215. *The Belfast*, 7 Wall. 638. Restricted as to liens, *Bogart v. Steamboat John Jay*, 17 How. 402. Liens of ship-pers a maritime contract, *Bags of Linseed*, 1 Black 112; *Bird of Paradise*, 5 Wall. 555; *Maggie Hammond*, 9 Wall. 449; *Rebecca Ware*, 190. Lien of master of foreign vessel, *Barque Havana*, 1 Sprague 403. For transportation of passengers, *Moses Taylor*, 4

(a) The words following were added by Amendment of February 18th, 1875.

Wall. 427. Charter party, *Morewood v. Enequist*, 23 How. 493; *Atkins v. Disintegrating Co.*, 18 Wall. 299; S. C. 2 Benedict 381. The Volunteer, 1 Sumn. 555. Contracts of affreightments, *The Eddy*, 5 Wall. 494. For seaman's wages, *The Gazelle*, 1 Sprague 378; *Steamboat Thos. Jefferson*, 10 Wheat. 428. For pilotage, *Hobart v. Doogan*, 10 Pet. 119. Of petitory as well as possessory actions, *Ward v. Peck*, 18 How. 267. On contracts limited to actions in rem, *Ramsey v. Allegre*, 12 Wheat. 616. Contract for supplies furnished not a marine contract, *Peoples Ferry Co. v. Beers*, 20 How. 393; *Maguire v. Card*, 21 How. 251. *Roach v. Chapman*, 22 How. 132. Nor a contract to carry on a commercial venture, *Ward v. Thompson*, 22 How. 333. Damages for loss of goods, *N. J. Steam Nav. Co. v. Merchant's Bk.*, 6 How. 413, 434. When jurisdiction depends on situation of thing, *Rose v. Himeby*, 4 Cranch 271, not limited to tide water. *The Hine-Trevar*, 4 Wall. 562; *The Eagle*, 8 Wall. 21, extends to all public navigable lakes and rivers. *Genessee Chief*, 12 How. 453; affirmed, *Fretz v. Bull*, 12 How. 468. On lakes to what confined, *Allen v. Newberry*, 21 How. 245. For injuries to passenger, *Steamboat New World v. King*, 16 How. 474. Collision in foreign waters, *Smith v. Condry*, 1 How. 28. In navigable waters within body of county, *Walsh v. Rogers*, 13 How. 283; *Wren v. Coffmann*, 19 How. 59; *Nelson v. Leland*, 22 How. 55; *Jackson v. The Magnolia*, 20 How. 298; *Sturges v. Bowyer*, 24 How. 117; *Propeller Commerce*, 1 Black, 580; *Norwich Co. v. Wright*, 13 Wall. 104; *U. S. v. La Vengeance*, 3 Dall. 301. *U. S. v. Schooner Sally*, 2 Cranch 406; *U. S. v. The Betsey and Charlotte*, 4 Cranch 452; *Keene v. U. S.*, 5 Cranch 310; *The Samuel*, 1 Wheat. 14; *L'Invincible*, 1 Wheat. 238; *The Estrella*, 4 Wheat. 307; *L'Amistad de Rues*, 5 Wheat. 385; *The Sarah*, 8 Wheat. 391; 1 Pet. 549; *The Merino*, 9 Wheat. 402; *The Margaret*, 9 Wheat. 429; *Jecker v. Montgomery*, 13 How. 516; *The Siren*, 7 Wall. 162; *The Abby*, 1 Mason 360; *The Washington*, 4 Blatch. 101. Exclusiveness of jurisdiction, *Slocum v. Mayberry*, 2 Wheat. 1; *Taylor v. Carryl*, 20 How. 598; *The Moses Taylor*, 4 Wall. 427; *The Belfast*, 7 Wall. 638; *The Eagle*, 8 Wall. 15. Concurrent jurisdiction of courts of law on marine contracts, *De Lovio v. Boit*, 2 Gall. 398. : *The Lottawana*. 21 Wall. 558.

Ninth. Of all proceedings for the condemnation of property taken as *prize*, in pursuance of section 5308, Title "Insurrection."

12 U.S.Stat. 319.

Tenth. Of all suits by the assignee of any *debenture* for drawback of duties, issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture. [See § 3039.]

1 U.S.Stat. 687.

Eleventh. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any *injury* to his person or property, or of the depriva-

tion of any right or privilege of a citizen of the United States by any act done in furtherance of any *conspiracy* mentioned in section nineteen hundred and eighty-five, Title, "Civil Rights." [See § 1980.]

17 U.S.Stat. 13.

Twelfth. Of all suits at law or in equity authorized by law to be brought by any person to redress the *deprivation* under color of any law, ordinance, regulation, custom or usage of any State, of *any right*, privilege, or immunity secured by the Constitution of the United States, or of any right secured by any law of the United States to persons within the jurisdiction thereof. [See § 1977, 1979.]

17 U.S.Stat. 13; 16 id. 144; 14 id. 27.

Thirteenth. Of all suits to *recover possession of any office*, except that of elector of President or Vice-President, representative or delegate in Congress, or member of a State legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided*, That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the States. [See § 2610.]

16 U.S.Stat. 146.

Fourteenth. Of all proceeding by the *writ of quo warranto*, prosecuted by any district attorney, for the removal from office of any person holding office, except as a member of Congress, or of a State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution of the United States. [See § 1786.]

16 U.S.Stat. 143.

Fifteenth. Of all suits by or against any association established under any law providing for *national banking associations* within the district for which the court is held.

13 U.S.Stat. 116. *Kennedy v. Gibson*, 8 Wall. 506.

Sixteenth. Of all suits brought by any *alien* for a tort only in violation of the law of nations, or of a treaty of the United States.

1 U.S.Stat. 76.

Seventeenth. Of all suits against *consuls* or vice-consuls, except for offenses above the description aforesaid.

1 U.S.Stat. 76 ; 5 id. 517. *Laury v. Lausada*, 1 Am. L. Rev. 92.

Eighteenth. The district courts are constituted courts of *bankruptcy*, and shall have in their respective districts original jurisdiction in all matters and proceedings in bankruptcy.

14 U.S.Stat. 517. ; *Bachman v. Packard*, 2 Saw. 264.

§ 564. Seizures for forfeiture.—Proceedings on seizures for forfeiture of any vessel or cargo entering any port of entry which has been closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection into other parts of the United States, or of any vessel or vehicle conveying such property, or conveying persons to or from such State or section, or of any vessel belonging, in whole or in part, to any inhabitant of such State or section, may be prosecuted in any district court into which the property so seized may be taken, and proceedings instituted; and the district court thereof shall have as full jurisdiction over such proceedings as if the seizure was made in that district. [See §§ 5301, 5317.]

12 U.S.Stat. 256, 257, 258.

§ 565. Prize causes after appeal.—Any district court may, notwithstanding an appeal to the Supreme Court, in any prize cause, make and execute all necessary orders for the custody and disposal of the prize property, and, in case of an appeal from a decree of condemnation, may proceed to make a decree of distribution, so far as to determine what share of the prize shall go to the captors, and what vessels are entitled to participate therein. [See § 4637.]

13 U.S.Stat. 310.

§ 566. Trial of issues of fact.—The trial of issues of fact in the district courts, in all causes except cases in equity and cases of admiralty and maritime jurisdiction,

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and except as otherwise provided in proceeding in bankruptcy, shall be by jury. In causes of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons burden or upward, enrolled and licensed for the coasting trade, and at the time employed in the business of commerce and navigation between places in different States and Territories upon the lakes and navigable waters connecting the lakes, the trial of issues of fact shall be by jury when either party requires it.

1 U.S.Stat. 76 ; 5 id. 726. *The Eagle*, 8 Wall. 25. Jury may be waived, *Henderson's Distilled Spirits*, 14 Wall. 44.

§ 567. Transfer of records of territorial courts.—When any Territory is admitted as a State, and a district court is established therein, all the records of the proceedings in the several cases pending in the court of appeals of said Territory at the time of such admission, and all records of the proceedings in the several cases in which judgments or decrees had been rendered in said territorial court before that time, and from which writs of error could have been sued out or appeals could have been taken, or from which writs of error had been sued out or appeals had been taken and prosecuted to the Supreme Court, shall be transferred to and deposited in the district court for the said State. [See § 704.]

9 U.S.Stat. 128 ; 9 id. 212. *Transfer of causes*, *Benner v. Porter*, 9 How. 247 ; *McNulty v. Batty*, 10 How. 80. Civil and criminal included, *Forsyth v. U. S.*, 9 How. 576.

§ 568. Demand for records of territorial court.—It shall be the duty of the district judge, in the case provided in the preceding section, to demand of the clerk, or other person having possession or custody of the records therein mentioned, the delivery thereof, to be deposited in said district court ; and, in case of the refusal of such clerk or person to comply with such demand, the said district judge shall compel the delivery of said records by attachment or otherwise, according to law.

9 U.S.Stat. 128 ; 9 id. 212.

§ 569. Jurisdiction in cases transferred from territorial courts.—When any Territory is admitted as a State, and a district court is established therein, the said district court shall take cognizance of all cases which were pending and undetermined in the superior court of

such Territory, from the judgments or decrees to be rendered in which writs of error could have been sued out or appeals taken to the Supreme Court, and shall proceed to hear and determine the same. [See § 704.]

9 U.S.Stat. 128 ; 9 id. 212.

§ 570. Commissioners to administer oaths to appraisers.—Any district judge may appoint commissioners, before whom appraisers of vessels or goods and merchandise seized for breaches of any law of the United States, may be sworn ; and such oaths, so taken, shall be as effectual as if taken before the judge in open court. [See § 938.]

1 U.S.Stat. 395.

§ 571. Certain district courts to have circuit-court jurisdiction.—The district courts for the western district of Arkansas, the northern district of Mississippi, the western district of South Carolina, and the district of West Virginia, shall have, in addition to the ordinary jurisdiction of district courts, jurisdiction of all causes, except appeals and writs of error, which are cognizable in a circuit court ; and shall proceed therein in the same manner as a circuit court.

Ark. 9 U.S.Stat. 595. Ga. 9 U.S.Stat. 281. Miss. 5 U.S.Stat. 317. S. C. 3 U.S.Stat. 726 ; 11 id. 43. W. Va. 3 U.S.Stat. 479 ; 5 id. 177 ; 5 id. 215 ; 13 id. 124 ; 17 id. 218.

For Amendments to Terms see Addenda.

CHAPTER IV.

DISTRICT COURTS—SESSIONS.

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603. Vacancy in office of district judge.

§ 572. Terms of district courts.—The regular terms of the district courts shall be held at the times and places following, but when any of said dates shall fall on Sunday, the term shall commence on the following day :

In the southern district of Alabama, at Mobile, on the fourth Monday in April, and the second Monday after the fourth Monday in November.

In the middle district of Alabama, at Montgomery, on the fourth Monday in May and November.

In the northern district of Alabama, at Huntsville, on the third Monday in May and November.

In the eastern district of Arkansas, at Little Rock, on the first Monday in April and October.

In the western district of Arkansas, at Fort Smith, on the second Monday in May and November, and at Helena on the second Monday in March and September.

In the district of California, at San Francisco, on the first Monday in April, on the second Monday in August, and on the first Monday in December.

In the district of Connecticut, at New Haven, on the fourth Tuesday in February; at Hartford, on the fourth Tuesday in May; at New Haven, on the fourth Tuesday in August; and at Hartford, on the fourth Tuesday in November.

In the district of Delaware, at Wilmington, on the second Tuesday in January, April, June, and September.

In the northern district of Florida, at Tallahassee, on the first Monday in February; at Pensacola, on the first Monday in March; and at Jacksonville, on the first Monday in December.

In the southern district of Florida, at Key West, on the first Monday in May and November.

In the northern district of Georgia, at Atlanta, on the first Monday in March and September.

In the southern district of Georgia, at Savannah, on the second Tuesday in February, May, August, and November.

In the northern district of Illinois, at Chicago, on the first Monday in July, and the third Monday in December.

In the southern district of Illinois, at Springfield, on the first Monday in January and June, and at Cairo, on the first Monday in March and October.

In the district of Indiana, at Indianapolis, on the first Tuesday in May and November, and at New Albany, on the first Monday in January and July, and at Evansville, on the first Monday in February and August.

In the northern division of the district of Iowa, at Dubuque, on the third Tuesday in April and November.

In the southern division, at Keokuk, on the third Tuesday in March and September.

In the central division, at Des Moines, on the second Tuesday in May and the third Tuesday in October.

In the western division, at Council Bluffs, on the third Tuesday in January and July.

In the district of Kansas, at the seat of government, on the second Monday in April, and at Leavenworth, on the second Monday in October.

In the district of Kentucky, at Covington, on the second Monday in May and the first Monday in December; at Louisville, on the third Monday in February and the first Monday in October; at Frankfort, on the third Monday in May and the first Monday in January; and at Paducah, on the second Monday in April and the first Monday in November.

In the district of Louisiana, at New Orleans, on the third Monday in February, May, and November.

In the district of Maine, at Portland, on the first Tuesday in February; at Bangor, on the fourth Tuesday in June; at Bath, on the first Tuesday in September, and at Portland on the first Tuesday in December.

In the district of Maryland, at Baltimore, on the first Tuesday in March, June, September, and December.

In the district of Massachusetts, at Boston, on the third Tuesday in March, on the fourth Tuesday in June, on the second Tuesday in September, and on the first Tuesday in December.

In the eastern district of Michigan, at Detroit, on the first Tuesday in March, June, and November.

In the western district of Michigan, at Grand Rapids, on the third Monday in May and October.

In the district of Minnesota, at Winona, on the first Monday in June, and at St. Paul on the first Monday in October.

In the northern district of Mississippi, at Oxford, on the first Monday in June and December.

In the southern district of Mississippi, at Jackson, on the fourth Monday in January and June.

In the eastern district of Missouri, at St. Louis, on the first Monday in May and November.

In the western district of Missouri, at Jefferson, on the first Monday in March and September.

In the district of Nebraska, at Omaha, on the first Monday in May, and on the first Wednesday after the second Tuesday in October.

In the district of Nevada, at Carson City, on the first Monday in February, May, and October.

In the district of New Hampshire, at Portsmouth, on the third Tuesday in March and September; at Exeter, on the third Tuesday in June and December.

In the district of New Jersey, at Trenton, on the third Tuesday in January, April, June, and September.

In the northern district of New York, at Albany, on the third Tuesday in January; at Utica, on the third Tuesday in March; at Rochester, on the second Tuesday in May; at Buffalo, on the third Tuesday in August; at Auburn, on the third Tuesday in November; and, in the discretion of the judge of said court, one term annually at such time and place within the counties of Saint Lawrence, Clinton, Jefferson, Oswego, and Franklin as he may from time to time appoint. Such appointment shall be made by a notice of at least twenty days, published in the State paper of the State of New York, and in one newspaper published at the place where said court is to be held; and said term shall be held only for the trial of issues of fact arising within said counties.

In the southern district of New York, in the city of New York, on the first Tuesday in every month.

In the eastern district of New York, in Brooklyn, on the first Wednesday in every month.

In the eastern district of North Carolina, at Elizabeth City, on the third Monday in April and October; at New Berne, on the fourth Monday in April and October; and at Wilmington, on the first Monday after the fourth Monday in April and October.

In the western district of North Carolina, at Greensborough, on the first Monday in April and October; at

Statesville, on the third Monday in April and October; and at Asheville, on the first Monday in May and November.

In the northern district of Ohio, at Cleveland, on the first Tuesday in January, April, and October; and at Toledo, two terms, to be held at such times as shall be fixed by the judge of said district.

In the southern district of Ohio, at Cincinnati, on the first Tuesday in February, April, and October.

In the district of Oregon, at Portland, on the first Monday in March, July, and November.

In the eastern district of Pennsylvania, at Philadelphia, on the third Monday in February, May, August, and November.

In the western district of Pennsylvania, at Pittsburgh, on the first Monday in May, and on the third Monday in October; at Williamsport, on the third Monday in June, and on the first Monday in October; at Erie, on the second Monday in January, and third Monday in July.

In the district of Rhode Island, at Providence, on the first Tuesday in February and August; at Newport, on the second Tuesday in May, and on the third Tuesday in October.

In the eastern district of South Carolina, at Charleston, on the first Monday in January, May, July, and October; in the western district, at Greenville, on the first Monday in August.

In the eastern district of Tennessee, at Knoxville, on the second Monday in January and July.

In the middle district of Tennessee, at Nashville, on the third Monday in April and October.

In the western district of Tennessee, at Memphis, on the fourth Monday in May and November.

In the eastern district of Texas, at Brownsville, on the first Monday in March and October; at Galveston, on the first Monday in May and December.

In the western district of Texas, at Austin, on the first Monday in January and June; at Tyler, on the fourth Monday in April, and on the first Monday in November.

In the district of Vermont, at Burlington, on the fourth Tuesday in February; at Windsor, on the Monday next after the fourth Tuesday in July; at Rutland, on the sixth day of October.

In the eastern district of Virginia, at Richmond, on the first Monday in April and October; at Alexandria, on the first Monday in January and July; and at Norfolk, on the first Monday in May and November.

In the western district of Virginia, at Danville, on the Tuesday after the fourth Monday in February and August; at Lynchburgh, on the Tuesday after the third Monday in March and September; at Abingdon, on the Tuesday after the fourth Monday in May and October; and at Harrisonburgh, on the Tuesday after the first Monday in May, and the Tuesday after the second Monday in October.

In the district of West Virginia, at Clarksburgh, on the twenty-fourth days of March and August; and at Wheeling, on the sixth days of April and September; and at Charleston, on the nineteenth days of April and September.

In the eastern district of Wisconsin, at Oshkosh, on the first Monday in July; at Milwaukee, on the first Monday in January and October.

In the western district of Wisconsin, at Madison, on the first Monday in June; and at La Crosse, on the third Tuesday in September.

§ 573. Effect of altering terms.—No action, suit, proceeding, or process in any district court shall abate or be rendered invalid by reason of any act changing the time of holding such court; but the same shall be deemed to be returnable to, pending, and triable in the terms established next after the return-day thereof.

§ 574. Court always open for certain purposes.—The district courts, as courts of admiralty, and as courts of equity, so far as equity jurisdiction has been conferred upon them, shall be deemed always open, for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing, upon their merits, of all causes pending therein. And any district judge may, upon reasonable notice to the parties, make, and direct, and award, at chambers, or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court.

§ 575. District court in southern district of Florida.—The district court for the southern district of Florida shall at all times be open, for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction.

9 U.S.Stat. 131.

§ 576. District courts in Wisconsin.—The district courts of the districts of Wisconsin shall at all times be open, for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction, so far as the same can be done without a jury.

9 U.S.Stat. 234 ; 16 id. 171 ; 5 id. 726.

§ 577. Terms in Kentucky and Indiana.—In the districts of Kentucky and Indiana, the terms of the district courts shall not be limited to any particular number of days, nor shall it be necessary to adjourn by reason of the intervention of a term of the court elsewhere ; but the court intervening may be adjourned over till the business of the court in session is concluded.

Ky. 12 U.S.Stat. 386. Ind. 16 U. S. Stat. 175.

§ 578. Monthly adjournments for trial of criminal causes.—District courts shall hold monthly adjournments of their regular terms, for the trial of criminal causes, when their business requires it to be done, in order to prevent undue expenses and delays in such cases.

5 U.S.Stat. 517.

§ 579. Adjourned terms.—The judge of any district court in Indiana, Kentucky, Louisiana, Michigan, Ohio, Pennsylvania, and Texas, may adjourn the same from time to time, to meet the necessities or convenience of the business.

16 U.S.Stat. 175. Ky. 12 U.S.Stat. 386. ~~Ma.~~ 10 U.S.Stat. 307 ; 14 id. 300. 12 U.S.Stat. 661. Ohio 10 U.S.Stat. 605. Pa. 3 U.S.Stat. 462 ; 4 id. 50 ; 14 id. 342. Tex. 11 U.S.Stat. 164. *Mechanics' Bank v. Withers*, 6 Wheat. 106.

§ 580. Adjourned terms in Kentucky and Indiana.—In the districts of Kentucky and Indiana the intervention of a term of the district court at another place, or of a circuit court, shall not preclude the power to adjourn over to a future day.

12 U.S.Stat. 386 ; 16 id. 175.

§ 581. Special terms.—A special term of any district

court may be held at the same place where any regular term is held, or at such other place in the district as the nature of the business may require, and at such time and upon such notice as may be ordered by the district judge. And any business may be transacted at such special term which might be transacted at a regular term.

1 U.S.Stat. 73. Ala. 5 U.S.Stat. 315; 12 id. 29. Ark. 5 U.S.Stat. 51; 9 id. 594. Cal. 9 U.S.Stat. 522. Fla. 5 U.S.Stat. 788; 9 id. 131. Ill. 9 U.S.Stat. 606. Ind. 16 U.S.Stat. 175. Ky. 12 U.S.Stat. 386. N. C. 17 U.S.Stat. 215. N. Y. 13 U.S.Stat. 385. Tenn. 13 U.S.Stat. 2. Va. 16 U.S.Stat. 403. Wis. 9 U.S.Stat. 234; 16 id. 171.

§ 582. Tennessee—when circuit judges may act as district judges.—In the case of the non-attendance of the district judge of Tennessee at any term of the district court in either of the districts thereof, the circuit justice, or circuit judge of the circuit to which such district belongs, may hold such term, and shall have and exercise the jurisdiction and powers given by law to a district judge.

5 U.S.Stat. 610; 16 id. 44.

§ 583. Adjournment—non-attendance of the judge.—If the judge of any district court is unable to attend at the commencement of any regular, adjourned, or special term, the court may be adjourned by the marshal, by virtue of a written order directed to him by the judge, to the next regular term, or to any earlier day, as the order may direct.

1 U.S.Stat. 76; 2 id. 291.

§ 584. Adjournment—non-attendance of the judge, in certain districts.—If the judge of any district court in Alabama, California, Georgia, Indiana, Iowa, Kentucky, North Carolina, Tennessee, or West Virginia, is not present at the time for opening the court, the clerk may open and adjourn the court from day to day for four days; and if the judge does not appear by two o'clock afternoon of the fourth day, the clerk shall adjourn the court to the next regular term. But this section is subject to the provisions of the preceding and next sections.

4 U.S.Stat. 10; 5 id. 316. Cal. 9 U.S.Stat. 522. Ga. 9 U.S.Stat. 281. Ind. 16 U.S.Stat. 175. Iowa 9 U.S.Stat. 411. Ky. 12 U.S.Stat. 386. N. C. 2 U.S.Stat. 676. Tenn. 5 U.S.Stat. 250. W. Va. 4 U.S.Stat. 49.

§ 585. Adjournment in Kentucky and Indiana, by written order, within first three days of terms.—In

the districts of Indiana and Kentucky, the district judge, in the case provided in the preceding section, may, by a written order to the clerk within the first three days of his term, adjourn the district court to a future day within thirty days of the first day. The clerk shall give notice of such adjournment by posting a copy of said order on the front door of the court-house where the court is to be held.

12 U.S.Stat. 386 ; 16 id. 175.

§ 586. Intermediate terms in California, Iowa, and Tennessee.—Whenever the judge of any district court in the districts of California, Iowa, and Tennessee fails to hold any regular term thereof, it shall be his duty, if it appears that the business of the court requires it, to hold an intermediate term. Such intermediate term shall be appointed by an order under his hand and seal, addressed to the clerk and marshal, at least thirty days previous to the time fixed therein for holding it, and the order shall be published the same length of time in the several newspapers published within such districts respectively. And at such intermediate term the business of the court shall have reference to and be proceeded with in the same manner as if it were a regular term.

9 U.S.Stat. 522 ; 9 id. 411 ; 5 id. 250 ; 5 id. 313.

§ 587. Business certified to circuit court in case of disability of district judge.—When satisfactory evidence is shown to the circuit judge of any circuit, or, in his absence, to the circuit justice allotted to the circuit, that the judge of any district therein is disabled to hold a district court, and to perform the duties of his office, and an application accordingly is made in writing to such circuit judge or justice, by the district attorney or marshal of the district, the said judge or justice, as the case may be, may issue his order in the nature of a certiorari, directed to the clerk of such district court, requiring him forthwith to certify into the next circuit court to be held in said district all suits and processes, civil and criminal, depending in said district court, and undetermined, with all the proceedings thereon, and all the files and papers relating thereto. Said order shall be immediately published in one or more newspapers printed in said district, at least thirty days before the session of said circuit court,

and shall be sufficient notification to all concerned; and thereupon the circuit court shall proceed to hear and determine the suits and processes so certified. And all bonds and recognizances taken for, or returnable to, such district court, shall be held to be taken for, and returnable to, said circuit court, and shall have the same effect therein as they could have had in the district court to which they were taken. [See § 637.]

2 U.S.Stat. 534; 9 id. 442; 10 id. 5; 16 id. 44. *Ex parte U. S.*, 1 Gallis. 338.

§ 588. Suits brought in district court after order to certify to circuit court.—When an order has been made as provided in the preceding section, the clerk of the district court shall continue, during the disability of the district judge, to certify, as aforesaid, all suits, pleas, and processes, civil and criminal, thereafter begun in said court, and to transmit them to the circuit court next to be held in that district; and the said court shall proceed to hear and determine them as provided in said section: *Provided*, That when the disability of the district judge ceases or is removed, the circuit court shall order all such suits and proceedings then pending and undetermined therein, in which the district courts have an exclusive original cognizance, to be remanded, and the clerk of such court shall transmit the same, with all matters relating thereto, to the district court next to be held in that district; and the same proceedings shall then be had in the district court as would have been had if such suits had originated or been continued therein.

2 U.S.Stat. 535. *Ex parte U. S.*, 1 Gallis. 338.

§ 589. Powers of district judge vested, during disability, in circuit judge.—In the case provided in the two preceding sections the circuit judge, and in his absence the circuit justice, shall have and exercise, during such disability, all the powers of every kind vested by law in such district judge. But this provision does not require them to hold any special court, or court of admiralty, at any other time than that fixed by law for holding the circuit court in said district.

2 U.S.Stat. 534.

§ 590. Preparatory examinations and orders in admiralty cases by district clerk.—When the business

of a district court is certified into the circuit court on account of the disability of the district judge, the district clerk shall be authorized, by order of the circuit judge, or, in his absence, of the circuit justice within whose circuit such district is included, to take, during such disability, all examinations and depositions of witnesses, and make all necessary rules and orders, preparatory to the final hearing of all causes of admiralty and maritime jurisdiction.

2 U.S.Stat. 535; 16 id. 44.

§ 591. District judge designated to perform duties of disabled judge.—When any district judge is prevented, by any disability, from holding any stated or appointed term of his district court, or of the circuit court in his district in the absence of the other judges, and the fact is made to appear by the certificate of the clerk, under the seal of the court, to the circuit judge, or, in his absence to the circuit justice of the circuit, in which the district lies, such circuit judge or justice may, if in his judgment the public interests so require, designate and appoint the judge of any other district in the same circuit to hold said courts, and to discharge all the judicial duties of the judge so disabled, during such disability. Such appointment shall be filed in the clerk's office, and entered on the minutes of the said district court, and a certified copy thereof, under the seal of the court, shall be transmitted by the district clerk to the judge so designated and appointed.

9 U.S.Stat. 442; 16 id. 44.

§ 592. Designation of another judge in case of accumulation of business.—When, from the accumulation or urgency of business in any district court, the public interests require the designation and appointment hereinafter provided, and the fact is made to appear, by the certificate of the clerk, under the seal of the court, to the circuit judge, or, in his absence, to the circuit justice of the circuit in which the district lies, such circuit judge or justice may designate and appoint the judge of any other district in the same circuit to have and exercise within the district first named the same powers that are vested in the judge thereof; and each of the said district judges may, in case of such appointment, hold separately at the same time a district or circuit court in such dis-

trict, and discharge all the judicial duties of a district judge therein; but no such judge shall hear appeals from the district court.

10 U.S.Stat. 5; 16 id. 44.

§ 593. When designation of another judge to be by Chief Justice United States.—If the circuit judge and circuit justice are absent from the circuit, or are unable to execute the provisions of either of the two preceding sections, or if the district judge so designated is disabled or neglects to hold the courts and transact the business for which he is designated, the district clerk shall certify the fact to the Chief Justice of the United States, who may thereupon designate and appoint, in the manner aforesaid, the judge of any district within such circuit or within any circuit next contiguous; and said appointment shall be transmitted to the district clerk, and be acted upon by him as directed in the preceding section.

9 U.S.Stat. 443; 10 id. 5; 16 id. 44.

§ 594. Revocation and new appointment.—The circuit judge, or circuit justice, or the Chief justice, as the case may be, may, from time to time, if in his judgment the public interests so require, make a new designation and appointment of any other district judge within the said circuits, for the duties and with the powers mentioned in the three preceding sections, and to revoke any previous designation and appointment.

9 U.S.Stat. 443; 10 id. 5; 16 id. 44.

§ 595. Duty of district judge to comply with designation and appointment.—It shall be the duty of the district judge who is designated and appointed under either of the four preceding sections, to discharge all the judicial duties for which he is so appointed, during the continuance of such disability, or, in the case of an accumulation of business, during the time for which he is so appointed; and all the acts and proceedings in the courts held by him, or by or before him, in pursuance of said provisions, shall have the same effect and validity as if done by or before the district judge of the said district.

9 U.S.Stat. 443; 10 id. 5.

§ 596. Designation of district judge when public interest requires.—It shall be the duty of every circuit

judge, whenever in his judgment the public interest so requires, to designate and appoint, in the manner and with the powers provided in section five hundred and ninety-one, the district judge of any judicial district within his circuit to hold a district or circuit court in the place or in aid of any other district judge within the same circuit; and it shall be the duty of the district judge, so designated and appointed, to hold the district or circuit (a) as aforesaid, without any other compensation than his regular salary as established by law, except in the case provided in the next section.

16 U.S.Stat. 494; 9 id. 442.

§ 597. Expenses of district judge designated to southern district of New York.—Whenever a district judge from another district holds a district or circuit court in the southern district of New York, in pursuance of the preceding section, his expenses, not exceeding ten dollars a day, certified by him, shall be paid by the marshal of said district, as a part of the expenses of the court, and shall be allowed in the marshal's account.

17 U.S.Stat. 36.

§ 598. Disability of district judges in Florida.—When a certificate of the judge of either of the districts of Florida, stating that he is disabled to hold any regular, special, or adjourned term of the court of such district, and requesting the judge of the other district to hold the same, is filed in the clerk's office of the place where it is to be held, the judge of the other district is authorized to hold such courts, and to exercise all the powers of district judge, in the district of the judge so certifying.

10 U.S.Stat. 615.

§ 599. Disability of judge of northern and southern districts of New York.—Whenever the judge of the northern district of New York is disabled to perform the duties of his office, it shall be the duty of the judge of the southern district, upon receiving from him notice thereof, to hold the district court, and to perform all the duties of district judge for such district. And whenever the judge of the southern district is so disabled, it shall be the duty of the judge of the eastern district, upon a like notice, to hold the district court, and to perform all

(a) The word court omitted.

the duties of district judge for the southern district. In such cases the said judges, respectively, shall have the same powers as are vested in the judge so disabled.

3 U.S.Stat. 414; 13 id. 438.

§ 600. When district judge of eastern district of New York may act in southern district.—Whenever the judge of the southern district of New York deems it desirable, on account of the pressure of public business or other cause, that the judge of the eastern district shall perform the duties of a district judge in the southern district, an order to that effect may be entered upon the records of the district court thereof; and thereupon the judge of the eastern district shall have power to hold the district court, and to perform all the duties of district judge for the southern district.

13 U.S.Stat. 438.

§ 601. When district judge is interested in suit pending before him.—Whenever it appears that the judge of any district court is in any way concerned in interest in any suit pending therein, or has been of counsel for either party, or is so related to or connected with either party as to render it improper, in his opinion, for him to sit on the trial, it shall be his duty, on application by either party, to cause the fact to be entered on the records of the court; and, also, an order that an authenticated copy thereof, with all the proceedings in the suit, shall be forthwith certified to the next circuit court for the district; and if there be no circuit court therein, to the next circuit court in the State; and if there be no circuit court in the State, to the next convenient circuit court in an adjoining State; and the circuit court shall, upon the filing of such record with its clerk, take cognizance of and proceed to hear the case, in like manner as if it had originally and rightfully been commenced therein. [See § 637.]

3 U.S.Stat. 643; 1 id. 278. *Spencer v. Lapsley*, 20 How. 266.

§ 602. Continuances by vacancy in office of district judge.—When the office of judge of any district court is vacant, all process, pleadings, and proceedings pending before such court shall be continued of course until the next stated term after the appointment and

qualification of his successor ; except when such first-mentioned term is held as provided in the next section.

1 U.S.Stat. 76 ; 12 id. 318.

§ 603. Vacancy in office of district judge.—When the office of district judge is vacant in any district in a State containing two or more districts, the judge of the other or of either of the other districts may hold the district court, or the circuit court in case of the sickness or absence of the other judges thereof, in the district where the vacancy occurs, and discharge all the judicial duties of judge of such district, during such vacancy ; and all the acts and proceedings in said courts, by or before such judge of an adjoining district, shall have the same effect and validity as if done by or before a judge appointed for such district.

12 U.S.Stat. 318.

CHAPTER V.

JUDICIAL CIRCUITS.

SECTION 604. Circuits.

§ 604. Circuits.—The judicial districts of the United States are divided into nine circuits as follows :

First. The first circuit includes the districts of Rhode Island, Massachusetts, New Hampshire, and Maine.

Second. The second circuit includes the districts of Vermont, Connecticut, and New York.

Third. The third circuit includes the districts of Pennsylvania, New Jersey, and Delaware.

Fourth. The fourth circuit includes the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

Fifth. The fifth circuit includes the districts of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

Sixth. The sixth circuit includes the districts of Ohio, Michigan, Kentucky, and Tennessee.

Seventh. The seventh circuit includes the districts of Indiana, Illinois, and Wisconsin.

Eighth. The eighth circuit includes the districts of Nebraska, Minnesota, Iowa, Missouri, Kansas, and Arkansas.

Ninth. The ninth circuit includes the districts of California, Oregon, and Nevada.

1 U.S.Stat. 74 ; 3 id. 554 ; 14 id. 209 ; 15 id. 5.

CHAPTER VI.

CIRCUIT COURTS—ORGANIZATION.

- SECTION 605.** Justices allotted to circuits, how designated.
 606. Allotment of the justices to the circuit.
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 624. Deputy clerks.
 625. Deputy clerks of circuit court in Indiana.
 626. Compensation of deputy clerks.
 627. Commissioners.
 628. Marshals not to be commissioners.

§ 605. Justices allotted to circuits, how designated.—The words “circuit justice” and “justice of a circuit,” when used in this Title, shall be understood to designate the justice of the Supreme Court who is allotted to any circuit; but the word “judge,” when applied generally to any circuit, shall be understood to include such justice.

§ 606. Allotment of the justices to the circuits.—The Chief Justice and associate justices of the Supreme Court shall be allotted among the circuits by an order of the court, and a new allotment shall be made whenever it becomes necessary or convenient by reason of the alteration of any circuit, or of the new appointment of a Chief

Justice or associate justice, or otherwise. If a new allotment becomes necessary at any other time than during a term, it shall be made by the Chief Justice, and shall be binding until the next term and until a new allotment by the court.

14 U.S.Stat. 433; *Stuart v. Laird*, 1 Cr. 299.

§ 607. Circuit judges.—For each circuit there shall be appointed a circuit judge, who shall have the same power and jurisdiction therein as the justice of the Supreme Court, allotted to the circuit, and shall be entitled to receive a salary at the rate of six thousand dollars a year, payable quarterly on the first days of January, April, July, and October. Every circuit judge shall reside within his circuit.

16 U.S.Stat. 44; 16 id. 494, 495.

§ 608. Circuit courts, where established.—Circuit courts are established as follows: One for the three districts of Alabama, one for the eastern district of Arkansas, one for the southern district of Mississippi, and one for each district in the States not herein named; and shall be called the circuit courts for the districts for which they are established.

1 U.S.Stat. 74; 17 id. 484, 485. Ark. 5 U.S.Stat. 177; 9 id. 594, 595; 15 id. 271; 16 id. 472. Cal. Oreg. 12 U.S.Stat. 794. Fla. Minn. 12 U.S.Stat. 576. Ga. 9 U.S.Stat. 280, 281; 17 id. 218. Ill. 10 U.S.Stat. 606. Ind. Iowa Kans. 5 U.S.Stat. 177. Ky. 2 U.S.Stat. 420. La. 5 U.S.Stat. 177; 14 id. 300. Mich. 12 U.S.Stat. 661. Miss., so. dist., 5 U.S.Stat. 177; 5 id. 247; 5 id. 317. Mo. 11 U.S.Stat. 198; 17 id. 282; 17 id. 476. Nebr. 15 U.S.Stat. 5. Nev. 13 U.S.Stat. 440. N. Y. 3 U.S.Stat. 121; 13 id. 438. N. Car. 1 U.S.Stat. 126. Ohio, 10 U.S.Stat. 604. Penn. 3 U.S.Stat. 462; 5 id. 177. R. I. 1 U.S.Stat. 128. Tenn. 2 U.S.Stat. 420; 5 id. 313; 15 id. 5. Tex. 12 U.S.Stat. 576. Vt. 1 U.S.Stat. 197. Va. 16 U.S.Stat. 403. W. Va. 5 U.S.Stat. 177; 13 id. 124; 14 id. 369. Wis. 16 U.S.Stat. 171.

§ 609. Circuit courts, by whom to be held.—Circuit courts shall be held by the circuit justice, or by the circuit judge of the circuit, or by the district judge of the district sitting alone, or by any two of the said judges sitting together.

16 U.S.Stat. 44.

§ 610. Justices of Supreme Court to attend once in every two years.—It shall be the duty of the Chief Justice, and of each justice of the Supreme Court, to attend at least one term of the circuit court in each

district of the circuit to which he is allotted during every period of two years.

16 U.S.Stat. 45.

§ 611. Judges of circuit courts may sit apart.—Cases may be heard and tried by each of the judges holding a circuit court sitting apart by direction of the presiding justice or judge, who shall designate the business to be done by each.

16 U.S.Stat. 44.

§ 612. Circuit courts held at same time in different districts.—Circuit courts may be held at the same time in the different districts of the same circuit.

16 U.S.Stat. 44.

§ 613. Criminal terms in the southern district of New York, how held.—The terms of the circuit court for the southern district of New York, appointed exclusively for the trial and disposal of criminal business, may be held by the circuit judge of the second judicial circuit and the district judges for the southern and eastern districts of New York, or any one of said three judges; and at every such term held by said judge of said eastern district he shall receive the sum of three hundred dollars, the same to be paid in the manner now prescribed by law for the payment of the expenses of another district judge while holding court in said district.

17 U.S.Stat. 422.

§ 614. When district judges may sit in cases of appeal or error to their own decisions.—A district judge sitting in a circuit court shall not give a vote in any case of appeal or error from his own decision, but may assign the reasons for such decision: *Provided*, That such a cause may, by consent of parties, be heard and disposed of by him when holding a circuit court sitting alone. When he holds a circuit court with either of the other judges, the judgment or decree in such cases shall be rendered in conformity with the opinion of the presiding justice or judge.

1 U.S.Stat. 74; 2 id. 158; 14 id. 545. *Bingham v. Cabbot*, 3 Dall. 34.

§ 615. When suits transferred from one circuit to

another.—When it appears in any civil suit in any circuit court that all of the judges thereof who are competent by law to try said case are in any way interested therein, or have been of counsel for either party, or are so related or connected with either party as to render it, in the opinion of the court, improper for them to sit in such trial, it shall be the duty of the court, on the application of either party, to cause the fact to be entered on the records, and to make an order that an authenticated copy thereof, with all the proceedings in the case, shall be forthwith certified to the most convenient circuit court in the next adjoining State or in the next adjoining circuit; and said court shall, upon the filing of such record and order with its clerk, take cognizance of and proceed to hear and determine the case, in the same manner as if it had been rightfully and originally commenced therein; and the proper process for the due execution of the judgment or decree rendered in the cause shall run into and may be executed in the district where such judgment or decree was rendered, and also into the district from which the cause was removed.

5 U.S.Stat. 322; 12 id. 768. *Spencer v. Lapsley*, 20 How. 266; *Supervisors v. Rogers*, 7 Wall. 179; *Richardson v. Boston*, 1 Curt. C. C. 250.

§ 616. Cause certified back.—The circuit justice, or the circuit judge of any circuit, may order any civil cause, which is certified into any court of the circuit under the provisions of the preceding section, to be certified back to the court whence it came; and then the latter shall proceed therein as if the cause had not been certified from it: *Provided*, That if, for any reason, it shall be improper for the judges of such court to try the cause so certified back, it shall be tried by some other judge holding such court, pursuant to the provisions of the next section.

12 U.S.Stat. 768; 5 id. 322; 16 id. 44. *Supervisors v. Rogers*, 7 Wall. 179.

§ 617. Justices may hold courts of other circuits on request.—Whenever a circuit justice deems it advisable, on account of his disability or absence, or of his having been of counsel, or being interested in any case pending in the circuit court for any district in his circuit, or of the accumulation of business therein, or for any

other cause, that said court shall be held by the justice of any other circuit, he may, in writing, request the justice of any other circuit to hold the same, during a time to be named in the request; and such request shall be entered upon the journal of the circuit court so to be holden. Thereupon it shall be lawful for the justice so requested to hold such court, and to exercise within and for said district, during the time named in said request, all the powers of the justice of such circuit.

12 U.S.Stat. 768. *Supervisors v. Rogers*, 7 Wall. 180.

§ 618. When no justice is allotted to a circuit.—Whenever, by reason of death or resignation, no justice is allotted to a circuit, the Chief Justice of the Supreme Court may make a request as provided in the preceding section, which shall have effect in like manner until a justice is allotted to such circuit.

12 U.S.Stat. 768.

§ 619. Clerks.—A clerk shall be appointed for each circuit court by the circuit judge of the circuit, except in cases otherwise provided for by law.

1 U.S.Stat. 76; 16 id. 45.

§ 620. Clerks in Kentucky.—In the district of Kentucky, a clerk of the circuit court shall be appointed at each place of holding the court, in the same manner and subject to the same duties and responsibilities which are or may be provided for clerks in independent districts.

12 U.S.Stat. 387; 16 id. 45.

§ 621. Clerks in North Carolina.—In the western district of North Carolina the circuit and district judges shall appoint three clerks, each of whom shall be clerks both of the circuit and district courts for said western district of North Carolina. One shall reside and keep his office at Statesville, one shall reside and keep his office at Asheville, and the third shall reside and keep his office at Greensborough.

17 U.S.Stat. 217.

§ 622. Clerks in western district of Virginia.—In the western district of Virginia the circuit and district judges shall appoint four clerks, each of whom shall be clerks both of the circuit and district courts for said district. One of these clerks shall reside and keep his

office at Lynchburgh, another shall reside and keep his office at Abingdon, another shall reside and keep his office at Danville, and the fourth shall reside and keep his office at Harrisonburgh, in said district.

16 U.S.Stat. 404.

§ 623. Clerks in western district of Wisconsin.—

In the western district of Wisconsin the circuit and district judges shall appoint two clerks, each of whom shall be clerks both of the circuit and district courts for said district. One shall reside and keep his office at Madison, and the other shall reside and keep his office at La Crosse.

16 U.S.Stat. 172.

§ 624. Deputy clerks.—One or more deputies of any clerk of a circuit court may be appointed by such court, on the application of the clerk, and may be removed at the pleasure of judges authorized to make the appointment. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office, and perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the life-time of the clerk or after his death, the clerk, and his estate, and the sureties in his official bond shall be liable; and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his life-time.

17 U.S.Stat. 330.

§ 625. Deputy clerks of circuit court in Indiana.—

In the district of Indiana a deputy clerk of the circuit court must be appointed for said court held at New Albany, and a deputy clerk for said court held at Evansville, who shall reside and keep their offices at said places respectively. Each deputy shall keep in his office full records of all actions and proceedings in the circuit court held at the same place, and shall have the same power to issue all process from the said court that is or may be given to the clerks of other circuit courts in like cases.

16 U.S.Stat. 473; 16 id. 175.

§ 626. Compensation of deputy clerks.—The

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compensations of deputies of clerks of the circuit courts shall be paid by the clerks, respectively, and allowed, in the same manner that other expenses of the clerks' offices are paid and allowed.

17 U.S.Stat. 330.

§ 627. Commissioners.—Each circuit court may appoint, in different parts of the district for which it is held, so many discreet persons as it may deem necessary, who shall be called “commissioners of the circuit courts,” and shall exercise the powers which are or may be expressly conferred by law upon commissioners of circuit courts. [See §§ 2025, 2026.]

1 U.S.Stat. 334; 2 id. 679; 3 id. 350.

§ 628. Marshals not to be commissioners.—No marshal, or deputy marshal, of any of the courts of the United States, shall hold or exercise the duties of commissioner of any of the said courts.

11 U.S.Stat. 50.

CHAPTER VII.

CIRCUIT COURTS—JURISDICTION.

- SECTION** 629. Jurisdiction.
- 630. In bankruptcy.
 - 631. Appeals in admiralty causes.
 - 632. Copies of proofs, etc., certified to appellate court.
 - 633. Writ of error to judgment of district courts.
 - 634. Circuit court in the three districts of Alabama.
 - 635. Writs of error and appeals within one year.
 - 636. Judgment or decree on review.
 - 637. Jurisdiction of cases transferred from district courts on account of disability, etc.
 - 638. Courts always open for certain purposes.
 - 639. Removal of suits against aliens, etc., where amount of \$500 in dispute.
 - 640. Removal of suits against corporations organized under a law of the United States.
 - 641. Removal of causes against persons denied any civil right, etc.
 - 642. When petitioner is in actual custody of State court.
 - 643. Removal of suits and prosecutions against revenue officers and officers acting under registration laws.
 - 644. Removal of suits by aliens in a particular case.
 - 645. When copies of records are refused by clerk of State court.
 - 646. Attachments, injunctions, and indemnity bonds to remain in force after removal.
 - 647. Removal of suits where parties claim land under titles from different States.
 - 648. Issues of fact; when to be tried by jury.
 - 649. Issues of fact tried by the court.
 - 650. Division of opinion in civil causes; decision by presiding judge.
 - 651. Division of opinion in criminal causes; certificate.
 - 652. Division of opinion in civil causes; certificate.
 - 653. Business of the circuit court for the two districts of Missouri transferred, how.
 - 654. Process issued out of former circuit court for Missouri.
 - 655. Transfer of cases, eastern and western districts.
 - 656. Custody of books, papers, etc., of circuit court of Missouri.
 - 657. Circuit court for southern district of New York, how limited.
- Act of March 3d, 1875.

See Act of March 3d, 1875, following § 657, as to original and concurrent jurisdiction of circuit courts.

§ 629. Jurisdiction.—The circuit courts shall have original jurisdiction as follows: *

First. Of all suits of a civil nature at common law or in equity, where the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, and an alien is a party, or the suit is between a citizen of the State where it is brought and a citizen of another State: *Provided*, That no circuit court shall have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange.

Citizenship of parties to be set out in records, *Emory v. Grenough*, 3 Dall. 369; *Bingham v. Cabot*, 3 Dall. 383; *Turner v. Enrille*, 4 Dall. 7; *Mossman v. Higgenson*, 4 Dall. 14; *Abercrombie v. Dupuis*, 1 Cranch 343; *McDonald v. Smalley*, 1 Pet. 623; *Jackson v. Twentyman*, 2 Pet. 136; *Shelton v. Tiffin*, 6 How. 185; *Eberly v. Moore*, 24 How. 157; *Hornthal v. The Collector*, 9 Wall. 566; *Barr v. Simpson*, Bald. 543. Term "Citizen of State" construed, *Hepburn v. Ellzey*, 2 Cranch 452; *Sere v. Pitot*, 6 Cranch 334; *Corp. of New Orleans v. Winter*, 1 Wheat. 94; *Barney v. Baltimore*, 6 Wall. 287. Citizenship and residency distinguished, *Morgan v. Morgan*, 2 Wheat. 297; *Dunn v. Clarke*, 8 Pet. 3; *Gracie v. Palmer*, 8 Wheat. 699; *Breedlove v. Nicolet*, 7 Pet. 429; *Toland v. Sprague*, 12 Pet. 327; *Jones v. McMasters*, 20 How. 18; *Christmas v. Russell*, 14 Wall. 78. Not divested by change of residence, *Jones v. League*, 18 How. 81; *Reilly v. Golding*, 10 Wall. 57; *Hatch v. Dorr*, 4 McLean 112; nor by change of condition, *Conolly v. Taylor*, 2 Pet. 565; *Clarke v. Mathewson*, 12 Pet. 170; *Union Bk v. Valden*, 18 How. 504; *DeSobry v. Nicholson*, 3 Wall. 423. Actions by and against executors, etc., *Childress v. Emery*, 8 Wheat. 668; *Rice v. Houston*, 13 Wall. 67. By alien as trustee, *Chappedelaine v. Dechenaux*, 6 Cranch 308. Corporations as parties, *Bank of Augusta v. Earle*, 13 Pet. 585; *Bank of Vicksburg v. Slocomb*, 14 Pet. 63; *Louisville C. & O. R. R. Co. v. Letson*, 2 How. 497; *Marshall v. Baltimore & O. R. R. Co.*, 16 How. 325; *Lafayette Ins. Co. v. French*, 18 How. 405; *Covington Bridge Co. v. Shepherd*, 20 How. 232; 21 How. 122. Insurance Co. v. Francis, 11 Wall. 216; *Ohio and M. R. R. Co. v. Wheeler*, 1 Black 297; *Cowles v. Mercer Co.*, 7 Wall. 118; *Pennsylvania Quicksilver Co.*, 10 Wall. 556; *Railway Co. v. Whitton*, 13 Wall. 288. Nominal and formal parties, *Brown v. Strode*, 5 Cranch 303; *Wormley v. Wormley*, 8 Wheat. 451; *Irvine v. Lowry*, 14 Pet. 298; *McNutt v. Bland*, 2 How. 13; *Huff v. Hutchinson*, 14 How. 588. Where joint and several interests represented, *Strawbridge v. Curtiss*, 3 Cranch 267; *Cameron v. McRoberts*, 3 Wheat. 593; *Vattier v. Hinde*, 7 Pet. 261; *Coal Co. v. Blatchford*, 11 Wall. 174; *Horn v. Lock*, 17 Wall. 579. Foreign Consuls United States v. Ravara, 2 Dall. 297; *Graham v. Stucken*, 4 Blatch 54. Assignee of chose in action, *Turner v. Bk. of N. A.*, 4 Dall. 10; *Young v. Bryan*, 6 Wheat. 151; *Mollan v. Torrance*, 9 Wheat. 538; *Buckner v. Finley*, 2 Pet. 589; *Smith v. Kernochen*, 7 How. 215; *Sheldon v. Sill*, 8 How. 449; *Coffee v. Planters Bk.*, 13 How. 186; *White v. Vermont & M. R. R. Co.*, 21 How. 577; *Brady v. Rhine*, 8 Wall. 896; *Bushnell v. Kennedy*,

9 Wall. 391; *City of Lexington v. Butler*, 14 Wall. 289; *Morgan v. Gay*, 19 Wall. 81; *Bobyshall v. Oppenheimer*, 4 Wash. O. C. 482. Assignees of insolvent, *Sere v. Pitot*, 6 Cranch 334; *Shelby v. Bacon*, 10 How. 56; *Bradford v. Jenks*, 2 McLean 130; *Dundas v. Bowler*, 3 id. 205; *Thaxter v. Hatch*, 6 id. 68; *Wilkinson v. Wilkinson*, 2 Curt O. C. 582. State cannot be party, *Gale v. Babcock*, 4 Wash. O. C. 199, 344. State of holder of stock, *Bk of Kentucky v. Wister*, 2 Pet. 323. No jurisdiction where both parties are aliens, *Montalet v. Murray*, 4 Cranch 47. Amount in controversy, *Gordon v. Longest*, 16 Pet. 104; *Bk of U. S. v. Moss*, 6 How. 37; *Martin v. Taylor*, 1 Wash. O. C. 2. Equity jurisdiction, *Irvine v. Marshall*, 20 How. 565; *Barber v. Barber*, 21 How. 591; *Green v. Creighton*, 23 How. 104; *Freeman v. Howe*, 24 How. 460; *Minnesota Co. v. St. Paul Co.*, 2 Wall. 632; *Payne v. Hook*, 7 Wall. 429; *St. Luke's Hospital v. Barclay*, 3 Blatch. 259. In patent cases, *Chaffee v. Hayward*, 20 How. 215. Objections, how waived, *Livingstone v. Story*, 11 Pet. 415. By appearance, *Pollard v. Dwight*, 4 Cranch 428; *Levy v. Fitzpatrick*, 15 Pet. 171; *Whyte v. Gibbes*, 20 How. 542; *Jones v. Andrews*, 10 Wall. 332. Jurisdiction not impaired by State jurisdiction, *Hyde v. Stone*, 20 How. 175; *Fitch v. Creighton*, 24 How. 162. See 21 Wall 513.

Second. Of all suits in equity where the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, and the United States are petitioners.

Third. Of all suits at common law where the United States, or any officer thereof suing under the authority of any act of Congress, are plaintiffs.

1 U.S.Stat. 76, 78; 3 id. 245. *Dugan v. U. S.* 3 Wheat. 179; *Postmaster-General v. Early*, 12 Wheat. 144; *Parsons v. Bedford*, 3 Pet. 444; *U. S. v. Barker*, 1 Paine 156; *Lorman v. Clark*, 2 McLean 572; *U. S. v. Greene*, 4 Mason 427.

Fourth. Of all suits at law or in equity, arising under any act providing for revenue from imports or tonnage, except civil causes of admiralty and maritime jurisdiction, and seizures on land or on waters not within admiralty and maritime jurisdiction, and except suits for penalties and forfeitures; of all causes arising under any law providing internal revenue, and of all causes arising under the postal laws.

Imports, 4 U.S.Stat. 632; 1 id. 76. Internal revenue, 14 U.S.Stat. 111, 145, 152; 14 id. 475, 483; 15 id. 167; 13 id. 239, 240, 305; 13 id. 483. Postal laws, 5 U.S.Stat. 739.

Fifth. Of all suits and proceedings for the enforcement of any penalties provided by laws regulating the carriage of passengers in merchant vessels. [See § 4270.]

10 U.S.Stat. 720.

Sixth. Of all proceedings for the condemnation of

property taken as prize, in pursuance of section fifty-three hundred and eight, Title "Insurrection." [See §§ 5308, 5309.]

12 U.S.Stat. 319. Union Insurance Co. v. U. S., 6 Wall. 763.

Seventh. Of all suits arising under any law relating to the slave-trade.

1 U.S.Stat. 347; 2 id. 70, 71; 2 id. 28; 3 id. 450, 451, 452; 3 id. 532; U. S. v. La Vengeance, 3 Dall. 301; U. S. v. Schooner Sally, 2 Cr. 406. U. S. v. Schooner Betsey and Charlotte, 4 Cr. 446; The Sarah, 8 Wheat. 394.

Eighth. Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture. [See § 3039.]

1 U.S.Stat. 687 (688).

Ninth. Of all suits at law or in equity arising under the patent or copyright laws of the United States.

16 U.S.Stat. 206, 215. Allen v. Blunt, 1 Blatch. 485; Goodyear v. Day, 1 Blatch. 566; Goodyear v. Union India Rubber Co., 4 Blatch. 65; Burr v. Gregory, 2 Paine 429; Brooks v. Stoley, 3 McLean 526; Pulte v. Derby, 5 McLean 336; Littlefield v. Perry, 21 Wall. 205.

Tenth. Of all suits by or against any banking association established in the district for which the court is held, under any law providing for national banking associations.

13 U.S.Stat. 116. Kennedy v. Gibson, 8. Wall. 506.

Eleventh. Of all suits brought by (a) any banking association established in the district for which the court is held, under the provisions of Title "The National Banks," to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. [See § 5237.]

13 U.S.Stat. 115, 116.

Twelfth. Of all suits brought by any person to recover damages for any injury to his person or property on account of any act done by him, under any law of the United States for the protection or collection of any of the

(a) The words *or against* were taken from the original by amendment of February 18th, 1875.

revenues thereof, or to enforce the right of citizens of the United States to vote in the several States.

4 U.S.Stat. 632 ; 14 id. 171 ; 16 id. 438 ; 16 id. 140.

Thirteenth. Of all suits to recover possession of any office, except that of elector of President or Vice-President, representative or delegate in Congress, or member of a State legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided*, That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law to enforce the right of citizens of the United States to vote in all the States. [See § 2010.]

16 U.S.Stat. 146.

Fourteenth. Of all proceedings by the writ of quo warranto, prosecuted by any district attorney, for the removal from office of any person holding office, except as a member of Congress or of a State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution of the United States. [See § 1786.]

16 U.S.Stat. 143 ; 16 id. 438.

Fifteenth. Of all suits to recover pecuniary forfeitures under any act to enforce the right of citizens of the United States to vote in the several States.

16 U.S.Stat. 140, 141, 142 ; 16 id. 438.

Sixteenth. Of all suits authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. [See §§ 1977, 1979.]

17 U.S.Stat. 13 ; 16 id. 114 ; 14 id. 27.

Seventeenth. Of all suits authorized by law to be

brought by any person on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty, Title "Civil Rights."

17 U.S.Stat. 13. *Blyew v. U. S.*, 13 Wall. 581.

Eighteenth. Of all suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section nineteen hundred and eighty are about to be done, and, having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act. [See § 1981.]

17 U.S.Stat. 15.

Nineteenth. Of all suits and proceedings arising under section fifty three hundred and forty-four, Title "Crimes," for the punishment of officers and owners of vessels, through whose negligence or misconduct the life of any person is destroyed.

16 U.S.Stat. 456.

Twentieth. Exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where it is or may be otherwise provided by law, and concurrent jurisdiction with the district courts of crimes and offenses cognizable therein.

1 U.S.Stat. 78. *U. S. v. Hudson*, 7 Cr. 32; *U. S. v. Coolidge*, 1 Wh. 416; *U. S. v. Bevans*, 3 Wh. 386; *U. S. v. Coombs*, 12 Pet. 74; *State of Pennsylvania v. Wheeling Bridge*, 13 How. 563; *U. S. v. Jackalow*, 1 Bl. 496; *U. S. v. Holliday*, 3 Wall. 409; *U. S. v. Wood*, 2 Wh. Cr. Cas. 325; *U. S. v. Ta-wan-ga-ca*, Hemp. 312; *U. S. v. Terrel*, Hemp. 411, 422; *U. S. v. Alberty*, Hemp. 445.

§ 630. In bankruptcy. The circuit courts shall have jurisdiction in matters in bankruptcy, to be exercised within the limits and in the manner provided by law.

14 U.S.Stat. 518, 520; *Bachman v. Packard*, 2 Saw. 264.

§ 631. Appeals in admiralty causes.—From all final decrees of a district court in causes of equity or of admiralty and maritime jurisdiction, except prize causes, where the matter in dispute exceeds the sum or value of fifty dollars, exclusive of costs, an appeal shall be allowed to the circuit court next to be held in such district, and

such circuit court is required to receive, hear, and determine such appeal.

1 U.S.Stat. 83; 2 id. 244; 13 id. 310; 17 id. 196. *Mordecai v. Lindsay*, 19 How. 200; *Montgomery v. Anderson*, 21 How. 388; *U. S. v. Wonson*, 1 Gallis. 6; *McLellan v. U. S.*, 1 Gallis. 229; *Brig Hollen*, 1 Mas. 434.

§ 632. Copies of proofs and entries certified to appellate court.—In case of an appeal, as provided by the preceding section, copies of the proofs, and of such entries and papers on file as may be necessary on hearing of the appeal, may be certified up to the appellate court.

10 U.S.Stat. 163.

§ 633. Writ of error to judgments of district courts.—Final judgments of a district court in civil actions, where the matter in dispute exceeds the sum or value of fifty dollars, exclusive of costs, may be re-examined and reversed or affirmed in a circuit court, holden in the same district, upon a writ of error.

1 U.S.Stat. 84. *Patterson v. U. S.*, 2 Wh. 225; *Smith v. Allyn*, 1 Paine 454; *Postmaster-General v. Cross*, 4 Wash. C. C. 327.

§ 634. Circuit court in and for the three districts of Alabama.—The circuit court in and for the three districts of Alabama shall exercise appellate and revisory jurisdiction of the decrees and judgments of the district courts for the said districts, under the laws conferring and regulating the jurisdiction, powers, and practice of circuit courts in cases removed into such courts by appeal or writ of error.

17 U.S.Stat. 485.

§ 635. Writs of error and appeals within one year.—No judgment, decree, or order of a district court shall be reviewed by a circuit court, on writ of error or appeal, unless the writ of error is sued out, or the appeal is taken, within one year after the entry of such judgment, decree, or order: *Provided*, That where a party entitled to prosecute a writ of error or to take an appeal is an infant, or non compos mentis, or imprisoned, such writ of error may be prosecuted, or such appeal may be taken, within one year after the entry of the judgment, decree, or order, exclusive of the term of such disability. [See § 1008.]

17 U.S.Stat. 196.

§ 636. Judgment or decree on review.—A circuit court may affirm, modify, or reverse any judgment, decree, or order of a district court brought before it for review, or may direct such judgment, decree, or order to be rendered, or such further proceedings to be had by the district court, as the justice of the case may require.

17 U.S.Stat. 196.

§ 637. Jurisdiction of cases transferred from district courts on account of disability, etc.—When any cause, civil or criminal, of whatever nature, is removed into a circuit court, as provided by law, from a district court wherein the same is cognizable, on account of the disability of the judge of such district court, or by reason of his being concerned in interest therein, or having been of counsel for either party, or being so related to or connected with either party to such cause as to render it improper, in his opinion, for him to sit on the trial thereof, such circuit court shall have the same cognizance of such cause, and in like manner, as the said district court might have, or as said circuit (*) might have if the same had been originally and lawfully commenced therein; and shall proceed to hear and determine the same accordingly. [See §§ 587, 601.]

2 U.S.Stat. 534; 3 id. 643.

§ 638. Courts always open for certain purposes.—The circuit courts, as courts of equity, shall be deemed always open for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing, upon their merits, of all causes pending therein. And any judge of a circuit court may, upon reasonable notice to the parties, make, and direct and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable, of course, according to the rules and practice of the court.

5 U.S.Stat. 517.

§ 639.* Removal of suits against aliens, etc., where amount of \$500 in dispute.—Any suit commenced in any State court, wherein the amount in dispute, exclusive

(*) The word *court* omitted in the roll.

* See post, p. 71, § 8.

of costs, exceeds the sum or value of five hundred dollars, to be made to appear to the satisfaction of said court, may be removed, for trial, into the circuit court, for the district where such suit is pending, next to be held after the filing of the petition for such removal hereinafter mentioned, in the cases and in the manner stated in this section.

1 U.S.Stat. 79; 14 id. 306; 14 id. 558.

Amount in controversy, *Roberts v. Nelson*, 8 Blatch. 77; *Gordon v. Longest*, 16 Pet. 104; *Ladd v. Tudor*, 3 Woodb. & M. 328. Not divested by amendment, *Kanouse v. Martin*, 15 How. 208; *Green v. Custard*, 23 How. 486; or by release, *Wright v. Wells*, 1 Pet. C. O. 220. Right of in general, *Uttetiqui v. D'Arcy*, 9 Pet. 697; *Insurance Co. v. Weide*, 9 Wall. 680; *Case of Sewing Machine Co.*, 18 Wall. 563; *Muns v. Dupont de Nemours*, 2 Wash. C. O. 463; *Brownell v. Gordon*, 1 McAll. 207; *Beecher v. Gillett*, 1 Dill. 310; of non-resident, *Sands v. Smith*, 1 Dill. 293; of real party in interest, *Bushnell v. Kennedy*, 9 Wall. 391; *City of Lexington v. Butler*, 14 Wall. 289; *Suydam v. Ewing*, 2 Blatch. 359; petition for, *Parker v. Overman*, 18 How. 141; *McVaughter v. Casserly*, 4 McLean 361. Several parties in interest, all must be qualified to move, *Ex parte Girard*, 3 Wall. jr. 265; *Field v. Larmsdale*, 1 Deady 291; *Hubbard v. Northern R. R. Co.*, 3 Blatch. 85; *Bixby v. Couse*, 8 id. 74; *Beardsley v. Torrey*, 4 Wash. C. O. 288. When interest is several, *Ex parte Turner*, 3 Wall. jr. 260; *Fields v. Lamb*, 1 Deady 430. Nominal parties not to oust jurisdiction, *Wood v. Davis*, 18 How. 470; *Ward v. Arredondo*, 1 Paine. 412; by copartners, *Case of Douglas*, 1 Dill. 300. What suits removable, *West v. Aurora City*, 6 Wall. 139; suits in equity, *Charter Oak Fire Ins. Co. v. Star Ins. Co.*, 6 Blatch. 209; case not removable, *Wilson v. Blodgett*, 4 McLean 363; where state a party, *Jersey v. Babcock*, 4 Wash. C. O. 344; when right to be claimed, *Johnson v. Monell*, 1 Woolw. C. O. 394; notice essential, *Bristol v. Chapman*, 34 How. Pr. 141.

First. When the suit is against an alien, or is by a citizen of the State wherein it is brought, and against a citizen of another State, it may be removed on the petition of such defendant, filed in said State court at the time of entering his appearance in said State court.

Gibson v. Johnson, Pet. C. O. 44.

Second. When the suit is against an alien and a citizen of the State wherein it is brought, or is by a citizen of such State against a citizen of the same, and a citizen of another State, it may be so removed, as against said alien or citizen of another State, upon the petition of such defendant, filed at any time before the trial or final hearing of the cause, if so far as it relates to him, it is brought for the purpose of restraining or enjoining him, or is a suit in

which there can be a final determination of the controversy, so far as concerns him, without the presence of the other defendants as parties in the cause. But such removal shall not take away or prejudice the right of the plaintiff to proceed at the same time with the suit in the State court, as against the other defendants.

Akerly v. Vilas, 1 Bissell 110, S. C. 1 Abb. C. C. 285.

Third. When a suit is between a citizen of the State in which it is brought and a citizen of another State, it may be so removed on the petition of the latter, whether he be plaintiff or defendant, filed at any time before the trial or final hearing of the suit, if, before or at the time of filing said petition, he makes and files in said State court an affidavit, stating that he has reason to believe and does believe that, from prejudice or local influence, he will not be able to obtain justice in such State court.

Dart v. McKinney, 9 Blatch. 360.

Removal may be had after motion for new trial has been granted, *Insurance Co. v. Dunn*, 19 Wall. 214; but after one trial the right to a second must be perfected before a demand for the transfer can be made, *Vannevar v. Bryant*, 2 Wash. L. Reporter 27; does not authorize a removal after an appeal has been taken to Supreme Court of the State, *Stevenson v. Williams*, 19 Wall. 572.

In order to such removal, the petitioner in the cases aforesaid must, at the time of filing his petition therefor, offer in said State court good and sufficient surety for his entering in such circuit court, on the first day of its session, copies of said process against him, and of all pleadings, depositions, testimony, and other proceedings in the cause, or, in said cases where a citizen of the State in which the suit is brought is a defendant, copies of all process, pleadings, depositions, testimony, and other proceedings in the cause concerning or affecting the petitioner, and also for his there appearing and entering special bail in the cause, if special bail was originally requisite therein. It shall thereupon be the duty of the State court to accept the surety and to proceed no further in the cause against the petitioner, and any bail that may have been originally taken shall be discharged.

Spraggins v. County Court, Cook Tenn. 161; *Matthews v. Lyall*, 6 McLean 18.

When the said copies are entered as aforesaid in the circuit court, the cause shall there proceed in the same man-

ner as if it had been brought there by original process, and the copies of pleadings shall have the same force and effect, in every respect and for every purpose, as the original pleadings would have had by the laws and practice of the courts of such State if the cause had remained in the State court.

Gier v. Gregg, 4 McLean 202; McLeod v. Duncan, 5 McLean 342; Screw Co. v. Bliven, 3 Blatch. 242; Barney v. Globe Bk., 5 id. 107.

§ 640. Removal of suits against corporations organized under a law of United States.—Any suit commenced in any court other than a circuit or district court of the United States, against any corporation other than a banking corporation, organized under a law of the United States, or against any member thereof as such member for any alleged liability of such corporation, or of such member as a member thereof, may be removed, for trial, in the circuit court for the district where such suit is pending, upon the petition of such defendant, verified by oath, stating that such defendant has a defense arising under or by virtue of the Constitution or of any treaty or law of the United States. Such removal, in all other respects, shall be governed by the provisions of the preceding section.

15 U.S.Stat. 227; 14 id. 306. Fisk v. Union P. R. R., 8 Blatch. 343; Railway Co v. Whitton, 13 Wall. 283; Sayles v. N. W. Ins. Co., 2 Curt. 212; Bliven v. N. E. Screw Co., 3 Blatch. 112; Barney v. Globe Bk., 5 id. 107; Hatch v. Chicago & C. R. R., 6 id. 111; Shelby v. Hoffman, 7 Ohio St. 452. Right dependent on citizenship, Fisk v. U. P. R. R. Co., 6 Blatch. 364.

§ 641. Removal of causes against persons denied any civil rights, etc.—When any civil suit or criminal prosecution is commenced in any State court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs, made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground

that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said State court, at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed, for trial, into the next circuit court to be held in the district where it is pending. Upon the filing of such petition all further proceedings in the State courts shall cease, and shall not be resumed except as hereinafter provided. But all bail and other security given in such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. It shall be the duty of the clerk of the State court to furnish such defendant, petitioning for a removal, copies of said process against him, and of all pleadings, depositions, testimony, and other proceedings in the case. If such copies are filed by said petitioner in the circuit court on the first day of its session, the cause shall proceed therein in the same manner as if it had been brought there by original process; and if the said clerk refuses or neglects to furnish such copies, the petitioner may thereupon docket the case in the circuit court, and the said court shall then have jurisdiction therein, and may, upon proof of such refusal or neglect of said clerk, and upon reasonable notice to the plaintiff, require the plaintiff to file a declaration, petition, or complaint in the cause; and, in case of his default, may order a nonsuit and dismiss the case at the costs of the plaintiff, and such dismissal shall be a bar to any further suit touching the matter in controversy. But if, without such refusal or neglect of said clerk to furnish such copies and proof thereof, the petitioner for removal fails to file copies in the circuit court as herein provided, a certificate, under the seal of the circuit court, stating such failure, shall be given, and upon the production thereof in said State court, the cause shall proceed therein as if no petition for a removal had been filed. [See § 1977.]

16 U.S.Stat. 144 : 14 id. 27 ; 12 id. 756 ; 14 id. 46. Commonwealth v. Artman, 3 Grant 436. Hodgson v. Milward, 3 Grant 418.

§ 642. When petitioner is in actual custody of State court.—When all the acts necessary for the removal of any suit or prosecution, as provided in the preceding section, have been performed, and the defendant petitioning for such removal is in actual custody on process issued

by said State court, it shall be the duty of the clerk of said circuit court to issue a writ of habeas corpus cum causa, and of the marshal, by virtue of said writ, to take the body of the defendant into his custody, to be dealt with in said circuit court according to law and the orders of said court, or, in vacation, of any judge thereof; and the marshal shall file with or deliver to the clerk of said State court a duplicate copy of said writ.

14 U.S.Stat. 385; 12 id. 756; 14 id. 46; 14 id. 27.

§ 643. Removal of suits and prosecutions against revenue officers and officers acting under registration laws.—When any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law; or is commenced against any person holding property or estate by title derived from any such officer, and affects the validity of any such revenue law; or is commenced against any officer of the United States, or other person, on account of any act done under the provisions of Title XXVI, "The Elective Franchise," or on account of any right, title, or authority claimed by such officer or other person under any of the said provisions, the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the circuit court next to be holden in the district where the same is pending, upon the petition of such defendant to said circuit court, and in the following manner: Said petition shall set forth the nature of the suit or prosecution, and be verified by affidavit; and, together with a certificate signed by an attorney or counselor at law of some court of record of the State where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him, and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said circuit court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the

circuit court, and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. When the suit is commenced in the State court by summons, subpoena, petition, or another process except *capias*, the clerk of the circuit court shall issue a writ of *certiorari* to the State court, requiring it to send to the circuit court the record and proceedings in the cause. When it is commenced by *capias*, or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of *habeas corpus cum causa*, a duplicate of which shall be delivered to the clerk of the State court, or left at his office by the marshal of the district, or his deputy, or by some person duly authorized thereto; and thereupon it shall be the duty of the State court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the circuit court, and any further proceedings, trial, or judgment therein in the State court shall be void. And if the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of *habeas corpus cum causa*, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the circuit court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the circuit court that no copy of the record and proceedings therein in the State court can be obtained, the circuit court may allow and require the plaintiff to proceed *de novo*, and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said circuit court. On failure of the plaintiff so to proceed, judgment of non-prosequitur may be rendered against him, with costs for the defendant.

4 U.S.Stat. 633; 14 id. 171; 16 id. 438.

Application, what to state, *Salem and Lowell R. R. v. Boston and L. R. R.*, 11 Law Rep. N. S. 210. De Abranches v. Schell, 4 Blatch. 259. Amount in dispute not regarded, *Wood v. Matthews*, 2 id. 372. Suits not removable, *Victor v. Cisco*, 5 id. 129; *Benchley v. Gilbert*, 8 id. 148. Case involving titles under direct tax laws, *Peyton v. Bliss*, 1 Wool. 170. Actions under Post Office laws, *Warner v. Fowler*, 4 Blatch. 313. Against collector for withholding moneys, *Van Zandt v. Maxwell*, 2 id. 421; to recover excess of duty paid, id. 306.

• **§ 644. Removal of suits by aliens in a particular case.**—Whenever a personal action has been or shall be brought in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States, being a non-resident of that State wherein jurisdiction is obtained by the State court, by personal service of process, such action may be removed into the circuit court of the United States in and for the district in which the defendant shall have been served with the process, in the same manner as now provided for the removal of an action brought in a State court by the provisions of the preceding section.

17 U.S.Stat. 44.

§ 645.* When copies of records are refused by clerk of State court.—In any case where a party is entitled to copies of the record and proceedings in any suit or prosecution in a State court, to be used in any court of the United States, if the clerk of said State court, upon demand, and the payment or tender of the legal fees, refuses or neglects to deliver to him certified copies of such records and proceedings, the court of the United States in which such record and proceedings are needed may, on proof by affidavit that the clerk of said State court has refused or neglected to deliver copies thereof, on demand as aforesaid, direct such record to be supplied by affidavit, or otherwise, as the circumstances of the case may require and allow; and, thereupon, such proceeding, trial, and judgment may be had in the said court of the United States, and all such processes awarded, as if certified copies of such records and proceedings had been regularly before the said court.

4 U.S.Stat. 634; 16 id. 439.

§ 646.* Attachments, injunctions, and indemnity bonds to remain in force after removal.—When a suit is removed for trial from a State court to a circuit court, as provided in the foregoing sections, any attachment of the goods or estate of the defendant by the original process shall hold the same to answer the final judgment, in the same manner as by the laws of such State they would have been held to answer final judgment had it been rendered by the court in which the suit was commenced; and any injunction granted before the removal of the cause against the defendant applying for its removal shall con-

* See post, p. 71, 74, §§ 4, 7.

tinue in force* until modified or dissolved by the United States court into which the cause is removed; and any bond of indemnity or other obligation, given by the plaintiff upon the issuing or granting of any attachment, writ of injunction, or other restraining process, against the defendant petitioning for the removal of the cause, shall also continue in full force and may be prosecuted by the defendant and made available for his indemnity in case the attachment, injunction, or other restraining process be set aside or dissolved, or judgment be rendered in his favor, in the same manner and with the same effect as if such attachment, injunction, or other restraining process had been granted, and such bond had been originally filed or given in such State court.

1 U.S.Stat. 79; 14 id. 306; 14 id. 558; 15 id. 227; 14 id. 27; 12 id. 756; 14 id. 46; 14 id. 385; 4 id. 633; 14 id. 171; 16 id. 438, 439.

§ 647.* Removal of suits where parties claim land under titles from different States.—If, in any action commenced in a State court, where the title of land is concerned, and the parties are citizens of the same State, and the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, the sum or value being made to appear to the satisfaction of the court, either party, before the trial, states to the court, and makes affidavit, if they require it, that he claims and shall rely upon a right or title to the land under a grant from a State other than that in which the suit is pending, and produces the original grant, or an exemplification of it, except where the loss of public records shall put it out of his power, and moves that the adverse party inform the court whether he claims a right or title to the land under a grant from the State in which the suit is pending, the said adverse party shall give such information, or otherwise not be allowed to plead such grant, or give it in evidence upon the trial; and if he gives information that he does claim under such grant, the party claiming under the grant first mentioned may, on motion, remove the cause for trial into the next circuit court to be holden in the district where such suit is pending. If the party so removing the cause is defendant, the removal shall be made under the regulations governing removals of a cause into such court by an alien; and neither party removing the cause shall be allowed to plead or give evidence of any

* See post, p. 72, § 2.

other title than that stated by him as aforesaid as the ground of his claim.

1 U.S.Stat. 79. *Town of Pawlet v. Clark*, 9 Cr. 322.

§ 648. Issues of fact, when to be tried by jury.—The trial of issues of fact in the circuit courts shall be by jury, except in cases of equity and of admiralty and maritime jurisdiction, and except as otherwise provided in proceedings in bankruptcy, and by the next section.*

1 U.S.Stat. 79; 13 *id.* 501. *Elmore v. Grymes*, 1 Pet. 471; *D'Wolf v. Rabaud*, 1 Pet. 497; *Crane v. Morris's Lessee*, 6 Pet. 609; *Silsby v. Foote*, 14 How. 222; *Castle v. Bullard*, 23 How. 183.

§ 649. Issues of fact tried by the court.—Issues of fact in civil cases in any circuit court may be tried and determined by the court, without the intervention of a jury, whenever the parties, or their attorneys of record, file with the clerk a stipulation in writing waiving a jury. The finding of the court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury. [See § 700.]*

13 U.S.Stat. 501.

Ogle v. Lee, 2 Cranch 33; *Hepburn v. Ellzey*, 2 Cranch 445; *Ross v. Triplett*, 3 Wheat. 600; *U. S. v. Lancaster*, 5 Wheat. 434; *U. S. v. Daniel*, 6 Wheat. 542; *Wayman v. Southard*, 10 Wheat. 1; *Devcreaux v. Marr*, 12 Wheat. 212; *Wolf v. Usher*, 3 Pet. 269; *Saunders v. Gould*, 4 Pet. 392; *Ex parte Crane*, 5 Pet. 206; *Grant v. Raymond*, 6 Pet. 220; *Davis v. Braden*, 10 Pet. 286; *Smith v. Vaughan*, 10 Pet. 366; *Packer v. Nixon*, 10 Pet. 408; *Adams v. Jones*, 12 Pet. 213; *White v. Turk*, 12 Pet. 238; *NeSmith v. Sheldon*, 6 How. 41; *U. S. v. Chicago*, 7 How. 185; *Sadler v. Hoover*, 7 How. 646; *Wilson v. Barnum*, 8 How. 258; *Webster v. Cooper*, 10 How. 54; *Dennistoun v. Stewart*, 18 How. 565; *U. S. v. City Bank of Columbus*, 19 How. 385; *Silliman v. Hudson River Bridge Co.*, 1 Black. 582; *Daniels v. R. R. Co.*, 3 Wall. 250; *Havemeyer v. Iowa Co.*, 3 Wall. 294; *Brobst v. Brobst*, 4 Wall. 2; *French v. Edwards*, 21 Wall. 147.

§ 650. Division of opinion in civil causes; decision by presiding judge.—Whenever, in any civil suit or proceeding in a circuit court held by a circuit justice and a circuit judge or a district judge, or by a circuit judge and a district judge, there occurs any difference of opinion between the judges as to any matter or thing to be decided, ruled, or ordered by the court, the opinion of the presiding justice or judge shall prevail, and be considered the opinion of the court for the time being.

17 U.S.Stat. 196.

* See post, p. 77 a

§ 651. Division of opinion in criminal causes—certificate.—Whenever any question occurs on the trial or hearing of any criminal proceeding before a circuit court upon which the judges are divided in opinion, the point upon which they disagree shall, during the same term, upon the request of either party, or of their counsel, be stated under the direction of the judges, and certified, under the seal of the court, to the Supreme Court at their next session; but nothing herein contained shall prevent the cause from proceeding, if, in the opinion of the court, further proceedings can be had without prejudice to the merits. Imprisonment shall not be allowed nor punishment inflicted in any case where the judges of such court are divided in opinion upon the question touching the said imprisonment or punishment. [See § 697.]

2 U.S.Stat. 150; 17 id. 196.

U. S. v. Tyler, 7 Cranch 285; U. S. v. Daniel, 6 Wheat. 542; U. S. v. Bailey, 9 Pet. 267; U. S. v. Briggs, 5 How. 208; U. S. v. Rosenbaum, 7 Wall. 580.

§ 652. Division of opinion in civil causes—certificate.—When a final judgment or decree is entered in any civil suit or proceeding before any circuit court held by a circuit justice and a circuit judge or a district judge, or by a circuit judge and a district judge, in the trial or hearing whereof any question has occurred upon which the opinions of the judges were opposed, the point upon which they so disagreed shall, during the same term, be stated under the direction of the judges, and certified, and such certificate shall be entered of record. [See § 693.]

17 U.S.Stat. 196; 2 id. 159.

Ogle v. Lee, 3 Cr. 33; Hepburn v. Ellzey, 2 Cr. 445; Ross v. Triplett, 3 Wh. 600; U. S. v. Lancaster, 5 Wh. 434; U. S. v. Daniel, 6 Wh. 542; Wayman v. Southard, 10 Wh. 1; Devereaux v. Marr, 12 Wh. 212; Wolf v. Usher, 3 Pet. 269; Saunders v. Gould, 4 Pet. 392; Ex parte Crane, 5 Pet. 206; Bank U. S. v. Green, 6 Pet. 26; Grant v. Raymond, 6 Pet. 218; Davis v. Braden, 10 Pet. 286; Smith v. Vaughan, 10 Pet. 366; Packer v. Nixon, 10 Pet. 408; Adams v. Jones, 12 Pet. 207; White v. Turk, 12 Pet. 238; U. S. v. Briggs, 5 How. 208; Nesmith v. Sheldon, 6 How. 41; Luther v. Borden, 7 How. 1; U. S. v. Chicago, 7 How. 185; Saddler v. Hoover, 7 How. 646; Wilson v. Barnum, 8 How. 258; Dennistoun v. Stewart, 18 How. 565; U. S. v. City Bank of Columbus, 19 How. 385; Silliman v. Hudson River Bridge, 1 Bl. 582; Ward v. Chamberlain, 2 Bl. 430; Daniels v. R. R. Co., 3 Wall. 250; Havemeyer v. Iowa County, 3 Wall. 295; Brobst v. Brobst, 4 Wall. 2; U. S. v. Rosenburgh, 7 Wall. 580; Hannauer v. Woodruff, 10 Wall. 482.

§ 653. Business of the circuit court for the two districts of Missouri transferred, how.—The circuit court for the eastern district of Missouri is vested with full and complete jurisdiction to hear, determine, and dispose of, according to the usual course of judicial proceedings, all suits, causes, motions, and other matters which were pending in the circuit court of the United States in and for the districts of Missouri at the time the said circuit court for the eastern district of Missouri was created, on the eighth day of June, eighteen hundred and seventy-two, and also all other matters which have since arisen that pertain to said suits or causes, and also to make all orders and issue of^(a) all processes which said circuit court of the United States in and for the districts of Missouri might have done if it had not ceased to exist; and said circuit court for said eastern district of Missouri is vested with jurisdiction and authority to do all and singular that may in the due course of judicial proceedings pertain to any of said suits, causes, or unfinished business as fully as the said circuit court in and for the districts of Missouri might have done if said circuit court had not ceased to exist.

17 U.S.Stat. 476.

§ 654. Process issued out of former circuit court for Missouri.—The service of process, mesne or final, issued out of said circuit court of the United States in and for the districts of Missouri, which service was had after the eighth day of June, eighteen hundred and seventy-two, and all levies, seizures, and sales made thereunder, also all service, seizure, levies, and sales made under any process which issued as out of said court after the said eighth day of June, eighteen hundred and seventy-two, are made valid, and all said processes are to be deemed returnable to said circuit court of the United States in and for the eastern district of Missouri as of the return day thereof.

17 U.S.Stat. 476.

§ 655. Transfer of cases between eastern and western districts.—Either of the circuit courts for the eastern and for the western district of Missouri may order any suit, cause, or other matter pending therein, and com-

(a) The word *of* in the Roll redundant.

menced prior to the creation of said new court, to be transferred for trial or determination to the other of said circuit courts when, in the opinion of the court, said transfer ought to be made; and the court to which said transfer is made shall have as full authority and jurisdiction over the same from the date the certified transcript of the record thereof is filed as if the same had been originally pending therein.

17 U.S.Stat. 476.

§ 656. Custody of books, papers, etc., of circuit court of Missouri.—That the clerk of the circuit court for the eastern district of Missouri, and his successors in office, shall have the custody of all records, books, papers, and property belonging or in any wise appertaining to said circuit court of the United States in and for the districts of Missouri, and, as such custodians and the successors of the clerk of said last named court, they are hereby invested with the same powers and authority with respect thereto as the clerk thereof had during the existence of said last named circuit court. Said circuit court for the eastern district of Missouri is hereby made the successor of said circuit court of the United States in and for the districts of Missouri as to all suits, causes, and unfinished business therein or in any wise pertaining thereto, except as hereinbefore provided.

17 U.S.Stat. 476.

§ 657. Circuit court for southern district of New York, how limited.—The original jurisdiction of the circuit court for the southern district of New York shall not be construed to extend to causes of action arising within the northern district of said State.

8 U.S.Stat. 415. *Wheeler v. McCormick*, 8 Blatch. C. C. 277.

GEO. J. BOAL.

Denver, Colo.

AN ACT

TO DETERMINE THE JURISDICTION OF CIRCUIT
COURTS OF THE UNITED STATES, AND TO
REGULATE THE REMOVAL OF CAUSES
FROM STATE COURTS, AND FOR
OTHER PURPOSES.

*Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled,*

Jurisdiction — original, concurrent, appellate. —

That the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different States, or a controversy between citizens of the same State claiming lands under grants of different States, or a controversy between citizens of a State and foreign states, citizens, or subjects; and shall have exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except as otherwise provided by law, and concurrent jurisdiction with the district courts of the crimes and offenses cognizable therein. But no person shall be arrested in one district for trial in another in any civil action before a circuit or district court. And no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving such process or commencing such proceedings, except

as hereinafter provided; nor shall any circuit or district court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant and bills of exchange. And the circuit courts shall also have appellate jurisdiction from the district courts under the regulations and restrictions prescribed by law.

§ 2. Civil action, removal of.—That any suit of a civil nature at law or in equity, now pending or hereafter brought in any State court, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which the United States shall be plaintiff or petitioner, or in which there shall be a controversy between citizens of different States, or a controversy between citizens of the same State claiming lands under grants of different States, or a controversy between citizens of a State and foreign states, citizens, or subjects, either party may remove said suit into the circuit court of the United States for the proper district; and when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the plaintiffs or defendants, actually interested in such controversy, may remove said suit to the circuit court of the United States for the proper district.

§ 3. Removal, proceedings.—That whenever either party, or any one or more of the plaintiffs or defendants entitled to remove any suit mentioned in the next preceding section, shall desire to remove such suit from a State court to the circuit court of the United States, he or they may make and file a petition in such suit in such State court before or at the term at which said cause could be first tried, and before the trial thereof, for the removal of such suit into the circuit court to be held in the district where such suit is pending, and shall make and file therewith a bond, with good and sufficient surety, for his or their entering in such circuit court, on the first day of its then next session, a copy of the record in such suit, and

for paying all costs that may be awarded by the said circuit court, if said court shall hold that such suit was wrongfully or improperly removed thereto, and also for there appearing and entering special bail in such suit; if special bail was originally requisite therein, it shall then be the duty of the State court to accept said petition and bond, and proceed no further in such suit, and any bail that may have been originally taken shall be discharged; and the said copy being entered as aforesaid in said circuit court of the United States, the cause shall then proceed in the same manner as if it had been originally commenced in the said circuit court; and if in any action commenced in a State court, the title of land be concerned, and the parties are citizens of the same State, and the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs, the sum or value being made to appear, one or more of the plaintiffs or defendants, before the trial, may state to the court, and make affidavit, if the court require it, that he or they claim and shall rely upon a right or title to the land under a grant from a State, and produce the original grant, or an exemplification of it, except where the loss of public records shall put it out of his or their power, and shall move that any one or more of the adverse party inform the court whether he or they claim a right or title to the land under a grant from some other State, the party or parties so required shall give such information, or otherwise not be allowed to plead such grant, or give it in evidence upon the trial; and if he or they inform that he or they do claim under such grant, any one or more of the party moving for such information may then, on petition and bond, as hereinbefore mentioned in this act, remove the cause for trial to the circuit court of the United States next to be holden in such district; and any one of either party removing the cause shall not be allowed to plead or give evidence of any other title than that by him or them stated as aforesaid as the ground of his or their claim, and the trial of issues of fact in the circuit courts shall, in all suits, except those of equity, and of admiralty and maritime jurisdiction, be by jury.

§ 4. Process, not affected by.—That when any suit shall be removed from a State court to a circuit court of the United States, any attachment or sequestration of the goods or estate of the defendant had in such suit in the

State court, shall hold the goods or estate so attached or sequestered to answer the final judgment or decree in the same manner as by law they would have been held to answer final judgment or decree had it been rendered by the court in which such suit was commenced; and all bonds, undertakings, or security given by either party in such suit prior to its removal, shall remain valid and effectual notwithstanding said removal; and all injunctions, orders, and other proceedings, had in such suit prior to its removal, shall remain in full force and effect until dissolved or modified by the court to which such suit shall be removed.

§ 5. Dismissal, when.—That if, in any suit commenced in a circuit court, or removed from a State court to a circuit court of the United States, it shall appear to the satisfaction of said circuit court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case, cognizable or removable under this act; the said circuit court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just, but the order of said circuit court dismissing or remanding said cause to the State court, shall be reviewable by the Supreme Court on writ of error or appeal as the case may be.

§ 6. Proceedings.—That the circuit court of the United States shall, in all suits removed under the provisions of this act, proceed therein as if the suit had been originally commenced in said circuit court, and the same proceedings had been taken in such suit in said circuit court as shall have been had therein in said State court prior to its removal.

§ 7. Time to file application—misfeasance of clerk—certiorari.—That in all causes removable under this act, if the term of the circuit court to which the same is removable, then next to be holden, shall commence within twenty days after filing the petition and bond in

the State court for its removal, then he or they who apply to remove the same shall have twenty days from such application to file said copy of record in said circuit court and enter appearance therein; and if done within said twenty days, such filing and appearance shall be taken to satisfy the said bond in that behalf; that if the clerk of the State court in which any such cause shall be pending shall refuse to any one or more of the parties or persons applying to remove the same, a copy of the record therein, after tender of legal fees for such copy, said clerk so offending shall be deemed guilty of a misdemeanor, and, on conviction thereof in the circuit court of the United States, to which said action or proceeding was removed, shall be punished by imprisonment not more than one year, or by fine not exceeding \$1,000, or both, in the discretion of the court. And the circuit court to which any cause shall be removable under this act shall have power to issue a writ of certiorari to said State court, commanding said State court to make return of the record in any such cause removed as aforesaid, or in which any one or more of the plaintiffs or defendants have complied with the provisions of this act for the removal of the same, and enforce said writ according to law; and if it shall be impossible for the parties or persons removing any cause under this act, or complying with its provisions for the removal thereof, to obtain such copy, for the reason that the clerk of said State court refuses to furnish a copy, on payment of legal fees, or for any other reason, the circuit court shall make an order requiring the prosecutor in any such action or proceeding to enforce forfeiture or recover penalty as aforesaid, to file a copy of the paper or proceeding by which the same was commenced, within such time as the court may determine; and in default thereof the court shall dismiss the said action or proceeding; but if said order shall be complied with, then said circuit court shall require the other party to plead, and said action or proceeding shall proceed to final judgment; and the said circuit court may make an order requiring the parties thereto to plead *de novo*; and the bond given, conditioned as aforesaid, shall be discharged so far as it requires a copy of the record to be filed as aforesaid.

§ 8. **Liens—appearance of parties.**—That when in any suit commenced in any circuit court of the United

States, to enforce any legal or equitable lien upon, or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur, by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks; and in case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order, and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein within such district. And when a part of the said real or personal property against which such proceeding shall be taken shall be within another district but within the same State, said suit may be brought in either district in said State: *Provided, however,* that any defendant or defendants not actually personally notified as above provided, may, at any time, within one year after final judgment in any suit mentioned in this section, enter his appearance in said suit in said circuit court, and thereupon the said court shall make an order setting aside the judgment therein, and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded with to final judgment, according to law.

§ 9. Revival on death of party.—That whenever either party to a final judgment or decree, which has been or shall be rendered in any circuit court, has died or shall die before the time allowed for taking an appeal or bringing a writ of error has expired, it shall not be necessary to revive the suit by any formal proceedings aforesaid. The representative of such deceased party may file in the office of the clerk of such circuit court a duly certified copy of his appointment, and thereupon may enter an appeal or bring writ of error as the party he represents might have done. If the party in whose favor such judgment or decree has rendered has died before appeal taken or writ of error brought, notice to his representatives shall be given from the Supreme Court, as provided in case of the death of a party after appeal taken or writ of error brought.

§ 10. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 3d, 1875.

Sec. 1.—Immunity from arrest: Guillon v. Fontain, 7 Leg. Gaz. 321.

Sec. 2.—Right of removal, when it ensues: Chicago City v. Gage, 8 Chic. Leg. News, 49; Kain v. Texas Pac. R. R. Co. 3 Cent. L. J. 13; Mayo v. Taylor, 8 Chic. Leg. News, 10; S. O. 7 Leg. Gaz. 326. For prejudice on account of race or color, etc.: Foulkes v. Foulkes, 8 Chic. Leg. News, 41.

Sec. 3.—Proceedings sufficient: First National Bk. v. King Wrought I. B. Co. 2 Cent. L. J. 505; Spook & Palmer v. Rankin, 2 Cent. L. J. 730; Merchants' and Manuf. National Bk. v. Wheeler, 3 Cent. L. J. 13; Kain v. Texas Pac. R. R. Co. 3 Cent. L. J. 13; Mayo v. Taylor, 8 Chic. Leg. News, 10; Same Case, 7 Leg. Gaz. 326; Osgood v. Chicago D. and V. R. R. Co. 2 Cent. L. J. 275, denied in 2 Cent. L. J. 507; Dunham v. Baird, 2 Weekly No. of Cas. 52. Cause removable, if petition and bond are filed "at or before the first term at which said cause could be first tried" *after the passage of the Act*, even when the cause had been tried and a new trial awarded before the passage of the act: Andrews' Exrs. v. Garrett, 2 Cent. L. J. 797; Minnett v. Milwaukee and St. Paul R. R. Co. 8 Chic. Leg. News, 169. The statute construed to refer to a term after passage of Act: Merchants' and Manuf. Bank v. Wheeler, 3 Cent. L. J. 13. "First term" construed to be the first term after issue joined: Scott v. Clinton & Springfield R. R. Co. 8 Chic. Leg. News, 210.

Sec. 5.—Mayo v. Taylor, 8 Chic. Leg. News, 10; Same Case, 7 Leg. Gaz 326; Chicago City v. Gage, 8 Chic. Leg. News, 49; Kain v. Texas Pac. R. R. Co. 3 Cent. L. J. 13. Oath as *prima facie* evidence of jurisdictional facts: Heath v. Austin, 12 Blatchf. 320.

Sec. 7.—Mayo v. Taylor, 8 Chic. Leg. News, 10; Same Case, 7 Leg. Gaz. 326. Materiality of time of entering copies, etc.: Clippinger v. Missouri V. L. Ins. Co. 8 Chic. Leg. News, 155.

MS.

MANUSCRIPT NOTES.

77a

AN ACT

TO FACILITATE THE DISPOSITION OF CASES IN THE SUPREME COURT OF THE UNITED STATES, AND FOR OTHER PURPOSES.

Findings, in circuit courts in admiralty cases—
Jury—Review.—*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the circuit courts of the United States, in deciding causes of admiralty and maritime jurisdiction on the instance side of the court, shall find the facts and the conclusions of law upon which it renders its judgments or decrees, and shall state the facts and conclusions of law separately. And in finding the facts, as before provided, said court may, upon the consent of the parties who shall have appeared and put any matter of fact in issue, and subject to such general rules in the premises as shall be made and provided from time to time, impanel a jury of not less than five and not more than twelve persons, to whom shall be submitted the issues of fact in such cause, under the direction of the court, as in cases at common law. And the finding of such jury, unless set aside for lawful cause, shall be entered of record, and stand as the finding of the court, upon which judgment shall be entered according to law. The review of the judgments and decrees entered upon such findings by the Supreme Court, upon appeal, shall be limited to a determination of the questions of law arising upon the record, and to such rulings of the circuit court, excepted to at the time, as may be presented by a bill of exceptions, prepared as in actions at law.

§ 2. Trial of issues of fact in patent cases—Jury.

—That said courts, when sitting in equity for the trial of patent causes, may impanel a jury of not less than five and not more than twelve persons, subject to such general rules in the premises as may, from time to time, be made by the Supreme Court, and submit to them such questions of fact arising in such cause as such circuit court shall deem expedient; and the verdict of such jury shall be treated and proceeded upon in the same manner and with the same effect as in the case of issues sent from chancery to a court of law and returned with such findings.

§ 3. Jurisdiction on appeal, matter in dispute.—

That whenever, by the laws now in force, it is required that the matter in dispute shall exceed the sum or value of two thousand dollars, exclusive of costs, in order that the judgments and decrees of the circuit courts of the United States may be re-examined in the Supreme Court, such judgments and decrees hereafter rendered shall not be re-examined in the Supreme Court unless the matter in dispute shall exceed the sum or value of five thousand dollars, exclusive of costs.

§ 4. That this act shall take effect on the first day of May, eighteen hundred and seventy-five.

Approved February 16th, 1875.

CHAPTER VIII.

CIRCUIT COURTS—SESSIONS.

SECTION 658. Terms.

- 659. Recognizances to a certain term in southern district of New York.
- 660. Effect of altering terms of circuit courts.
- 661. Special sessions for trial of criminal cases.
- 662. Special sessions for criminal trials near the place of the offense.
- 663. Adjourned terms, Missouri.
- 664. California, Oregon, and Nevada, special sessions.
- 665. Kentucky and Indiana, special terms.
- 666. Tennessee, special terms.
- 667. North Carolina, special terms.
- 668. Virginia, Wisconsin, special terms.
- 669. Special terms, general rule.
- 670. Special terms, business transacted at.
- 671. Adjournment in absence of the judges.
- 672. Adjournment in absence of the judges, by written order.

§ 658. Terms. — The regular terms of the circuit courts shall be held in each year, at the times and places following; but when any of said dates shall fall on Sunday, the term shall commence on the following day:

In and for the southern district of Alabama, at Mobile, on the second Monday in April and the fourth Monday in December.

In and for the eastern district of Arkansas, at Little Rock, on the second Monday in April and the fourth Monday in October.

In the district of California, at San Francisco, on the first Monday in February, the second Monday in June, and the first Monday in October *

In the district of Connecticut, at New Haven, on the fourth Tuesday in April; and at Hartford, on the third Tuesday in September.

In the district of Delaware, at Wilmington, on the third Tuesdays in June and October.

In the southern district of Florida, at Key West, on the first Mondays in May and November.

In the northern district of Florida, at Tallahassee, on the first Monday in February; at Pensacola, on the first

* For Amendments to Terms see Addenda.

Monday in March; and at Jacksonville, on the first Monday in December.

In the southern district of Georgia, at Savannah, on the second Monday in April; and on the Thursday after the first Monday in November.

In the northern district of Georgia, at Atlanta, on the second Mondays in March and September.

In the northern district of Illinois, at Chicago, on the first Monday in July and the third Monday in December.

In the southern district of Illinois, at Springfield, on the first Mondays in January and June.

In the district of Indiana, at Indianapolis, on the first Tuesday in May and November; and at New Albany, on the first Monday in January and July; and at Evansville, on the first Monday in February and August.

In the district of Iowa, at Des Moines, on the second Mondays in May and October.

In the district of Kansas, at Leavenworth, on the first Monday in June; and at the seat of government of the State, on the fourth Monday in November.

In the district of Kentucky, at Covington, on the third Monday in April and the first Monday in December; at Louisville, on the third Monday in February and the first Monday in October; at Frankfort, on the third Monday in May and the first Monday in January; and at Paducah, on the third Monday in March and the first Monday in November.

In the district of Louisiana, at New Orleans, on the fourth Monday in April and the first Monday in November.

In the district of Maine, at Portland, on the twenty-third days of April and September.

In the district of Maryland, at Baltimore, on the first Mondays in April and November.

In the district of Massachusetts, at Boston, on the fifteenth days of May and October.

In the eastern district of Michigan, at Detroit, on the first Tuesdays in March, June, and November.

In the western district of Michigan, at Grand Rapids, on the third Mondays in May and October.

In the district of Minnesota, at Saint Paul, on the third Monday in June and the second Monday in December.

In the southern district of Mississippi, at Jackson, on the first Mondays in May and November.

In the eastern district of Missouri, at Saint Louis, on the third Mondays in March and September.

In the western district of Missouri, at Jefferson, on the third Mondays in April and November.

In the district of Nebraska, at Omaha, on the first Monday in May and the second Monday in November.

In the district of Nevada, at Carson City, on the first Mondays in March, August, and December.

In the district of New Hampshire, at Portsmouth, on the eighth day of May; and at Exeter on the eighth day of October.

In the district of New Jersey, at Trenton, on the fourth Tuesdays in March and September.

In the northern district of New York, at Canandaigua, on the third Tuesday in June; at Albany, on the second Tuesday in October; and when the term appointed to be held at Albany is adjourned, it shall be adjourned to meet at the same place on the third Tuesday in January; and when said adjourned term is adjourned it shall be adjourned to meet in Utica on the third Tuesday in March. The said adjourned terms shall be held for the transaction of civil business only.

In the southern district of New York, at the city of New York, on the first Monday in April and the third Monday in October; and for the trial of criminal causes and suits in equity, on the last Monday in February; and exclusively for the trial and disposal of criminal cases, and matters arising and pending in said court, on the second Wednesday in January, March, and May, on the third Wednesday in June, and on the second Wednesday in October and December: *Provided*, That the holding of any of the last mentioned terms for criminal business shall not dispense with nor affect the holding of any other term of the court at the same time, and that the pending of any other term of the court shall not prevent the holding of any of the said terms for criminal business.

In the eastern district of New York, at Brooklyn, on the first Wednesday in every month.

In the eastern district of North Carolina, at Raleigh, on the first Monday in June and the last Monday in November.

In the western district of North Carolina, at Greensborough, on the first Mondays in April and October; at Statesville, on the third Mondays in April and October; and at Asheville, on the first Mondays in May and November.

In the northern district of Ohio, at Cleveland, on the first Tuesdays in January, April, and October.

In the southern district of Ohio, at Cincinnati, on the first Tuesdays in February, April, and October.

In the district of Oregon, at Portland, on the first Mondays in January, May, and September.

In the eastern district of Pennsylvania, at Philadelphia, on the first Mondays in April and October.

In the western district of Pennsylvania, at Erie, on the second Monday in January and third Monday in July; at Pittsburgh, on the second Mondays in May and November; and at Williamsport, on the third Mondays in June and September.

In the district of Rhode Island, at Providence, on the fifteenth days of June and November.

In the district of South Carolina, at Charleston, on the first Monday in April; and at Columbia, on the fourth Monday in November.

In the eastern district of Tennessee, at Knoxville, on the second Mondays in January and July.

In the middle district of Tennessee, at Nashville, on the third Mondays in April and October.

In the western district of Tennessee, at Memphis, on the fourth Mondays in May and November.

In the eastern district of Texas, at Brownsville, on the first Mondays in March and October; and at Galveston, on the first Mondays in May and December.

In the western district of Texas, at Austin, on the first Mondays in January and June; and at Tyler, on the fourth Monday in April and the first Monday in November.

In the district of Vermont, at Burlington, on the fourth Tuesday in February; at Windsor, on the fourth Tuesday in July; and at Rutland, on the third day of October.

In the eastern district of Virginia, at Richmond, on the first Monday in April and October; at Alexandria, on the first Monday in January and July; and at Norfolk, on the first Monday in May and November.

In the western district of Virginia, at Danville, on the Tuesday after the fourth Monday in February and August; at Lynchburgh, on the Tuesday after the third Monday in March and September; at Harrisonburgh, on the Tuesday after the first Monday in May and the Tuesday after the second Monday in October; and at Abing-

don, on the Tuesday after the fourth Monday in May and October.

In the district of West Virginia, at Parkersburgh, on the first Monday in August.

In the eastern district of Wisconsin, at Oshkosh, on the first Monday in July; and at Milwaukee, on the first Monday in January and October.

In the western district of Wisconsin, at Madison, on the first Monday in June; and at La Crosse, on the third Tuesday in September.

§ 659. Recognizances to a certain term in southern district of New York.—All recognizances and bailbonds taken in criminal cases for an appearance at a circuit court in the southern district of New York, conditioned upon an appearance at the next one of the terms appointed by the act of February seven, eighteen hundred and seventy-three, shall be valid.

17 U.S.Stat. 423.

§ 660. Effect of altering terms of circuit courts.—No action, suit, proceeding, or process in any circuit court shall abate or be rendered invalid by reason of any act changing the time of holding such court; but the same shall be deemed to be returnable to, pending, and triable in the terms established, next after the return day thereof.

See all acts altering terms.

§ 661. Special sessions for trial of criminal causes.—Any circuit court may, at its own discretion, or at the discretion of the Supreme Court, hold special sessions for the trial of criminal causes.

1 U.S.Stat. 75.

§ 662. Special sessions for criminal trials near the place of the offense.—The Supreme Court, or, when that court is not sitting, any circuit justice or circuit judge, together with the judge of the proper district, may direct special sessions of a circuit court to be held, for the trial of criminal causes, at any convenient place within the district nearer to the place where the offenses are said to be committed than the place appointed by law for the stated sessions. The clerk of such court shall, at least thirty days before the commencement of such special session, cause the time and place for holding it to be notified, for at least

three weeks consecutively, in one or more of the newspapers published nearest to the place where it is to be held. All process, writs, and recognizances respecting juries, witnesses, bail, or otherwise, which relate to the cases to be tried at such special sessions, shall be considered as belonging to such sessions, in the same manner as if they had been issued or taken in reference thereto. Any such session may be adjourned from time to time to any time previous to the next stated term of the court; and all business depending for trial at any special session shall, at the close thereof, be considered as removed to the next stated term.

1 U.S.Stat. 343; 16 id. 44. U. S. v. The Insurgents, 3 Dall. 513. U. S. v. Cornell, 2 Mas. 98.

§ 663. **Adjourned terms, Missouri.**—The circuit courts for the several districts of Missouri may at any time order adjourned terms thereof. In the eastern district a copy of the order shall be posted on the door of the court-room, and shall be advertised in some newspaper printed in Saint Louis, and in the western district a copy of the order shall be posted on the door of the court-room, and advertised in some newspaper printed in the city of Jefferson, at least twenty days before the adjourned term is held. At such adjourned term any business may be transacted which might be transacted at a regular term.

17 U.S.Stat. 283. *Mechanics' Bank v. Withers*, 6 Wheat. 106. *Anon.*, 1 Cr. C. C. 159.

§ 664. **California, Oregon, and Nevada, special sessions.**—In the districts of California, Oregon, and Nevada the circuit justice or circuit judge may appoint special sessions of the circuit courts, to be held at the places where the regular sessions are held, by an order under his hand and seal, directed to the marshal and clerk of such court at least fifteen days before the time fixed for the commencement of such special sessions. Said order shall be published by the marshal in one or more of the newspapers within the district where such sessions are to be held.

13 U.S.Stat. 4; 12 id. 794; 13 id. 440; 16 id. 44.

§ 665. **Kentucky and Indiana, special terms.**—In the districts of Kentucky and Indiana the district judge, and, in his absence, the circuit justice or circuit judge,

may, by a written order to the clerk of the circuit court, appoint a special term of such court; and by said order the judge may prescribe the duties of the officers of the court in summoning juries, and in the performance of other acts necessary for the holding of such special term, or the court may, by its order, after it is opened, prescribe the duties of its officers, and the mode of proceeding, and any of the details thereof. Notice of such special term shall be given by the clerk, by posting a copy of said order on the front door of the court-house where the court is to be held, and by publishing the same in one or more newspapers in the same place.

12 U.S.Stat. 386; 16 id. 175.

§ 666. *Tennessee, special term.*—In each of the districts of Tennessee the judges of the circuit court may appoint special terms thereof, to be held at the place where the regular terms are held; and notice of such special term shall be published, for four consecutive weeks, in at least one newspaper printed at the place where the court is to be held.

13 U.S.Stat. 2.

§ 667. *North Carolina, special terms.*—In each of the districts of North Carolina the circuit court may order special terms thereof to be held at such times and places in said district as the court may designate: *Provided*, That no special term of the circuit court for either district shall be appointed, except by and with the concurrence and consent of the circuit judge.

17 U.S.Stat. 215.

§ 668. *Virginia and Wisconsin, special terms.*—In each of the districts of Virginia and of Wisconsin the circuit court may order special terms, and direct the grand or petit jury, or both, to attend the same, by an order to be entered of record twenty days before the day on which such special term is to convene: *Provided*, That no special term of such circuit courts shall be appointed in any of the said districts, except by and with the concurrence and consent of the circuit judge.

16 U.S.Stat. 171; 16 id. 403.

§ 669. *Special terms, general rule.*—In the districts not mentioned in the five preceding sections, the presiding

judge of any circuit court may appoint special sessions thereof, to be held at the places where the regular sessions are held.

5 U.S.Stat. 393.

§ 670. Special terms, business transacted at.—At any special term of a circuit court in any district in Indiana, Kentucky, Missouri, North Carolina, Virginia, and Wisconsin, any business may be transacted which might be transacted at any regular term of such court. At any special term of a circuit court in any other district, it shall be competent for the court to entertain jurisdiction of and to hear and decide all cases in equity, cases in error or on appeal, issues of law, motions in arrest of judgment, motion for a new trial, and all other motions, and to award executions and other final process, and to do and transact all other business, and direct all other proceedings, in all causes pending in the circuit court, except trying any cause by a jury, in the same way and with the same effect as the same might be done at any regular session of said court.

12 U.S.Stat. 386; 16 id. 175; 10 id. 612; 16 id. 171; 16 id. 403; 5 id. 393; 13 id. 2; 13 id. 4; 13 id. 440; 17 id. 215.

§ 671. Adjournment in absence of the judges.—If neither of the judges of a circuit court is present to open any session, the marshal may adjourn the court from day to day until a judge is present: *Provided*, That if neither of them attends before the close of the fourth day after the time appointed for the commencement of the session, the marshal may adjourn the court to the next regular term.

1 U.S.Stat. 76; 1 id. 369; 16 id. 44.

§ 672. Adjournment in absence of the judges, by written order.—If neither of the judges of a circuit court be present to open and adjourn any regular or adjourned or special session, either of them may, by a written order, directed alternatively to the marshal, and, in his absence, to the clerk, adjourn the court from time to time, as the case may require, to any time before the next regular term.

5 U.S.Stat. 392; 5 id. 314.

CHAPTER IX.

SUPREME COURT—ORGANIZATION.

- SECTION 673.** Number of justices.
 674. Precedence of the associate justices.
 675. Vacancy in the office of Chief Justice.
 676. Salaries of judges.
 677. Clerk, marshal, and reporter.
 678. Deputies of the clerk.
 679. Records of the old court of appeals.
 680. Marshal of the Supreme Court.
 681. Duties of the reporter.
 682. Reporter's salary and price of reports.
 683. Distribution of the Supreme Court reports.

§ 673. Number of justices.—The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.

16 U.S.Stat. 44.

§ 674. Precedence of the associate justices.—The associate justices shall have precedence according to the dates of their commissions, or, when the commissions of two or more of them bear the same date, according to their ages.

1 U.S.Stat. 73.

§ 675. Vacancy in the office of Chief Justice.—In case of a vacancy in the office of Chief Justice, or of his inability to perform the duties and powers of his office, they shall devolve upon the associate justice who is first in precedence, until such disability is removed, or another Chief Justice is appointed and duly qualified. This provision shall apply to every associate justice who succeeds to the office of Chief Justice.

1 U.S.Stat 73; 15 id. 80.

§ 676. Salaries of judges.—The Chief Justice of the Supreme Court of the United States shall receive the sum of ten thousand five hundred dollars a year, and the justices thereof shall receive the sum of ten thousand dollars a year each, to be paid monthly.

17 U.S.Stat. 486.

§ 677. Clerk, marshal, and reporter.—The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions.

1 U.S.Stat. 76; 5 id. 524; 5 id. 545; 14 id. 433.

§ 678. Deputies of the clerk.—One or more deputies of the clerk of the Supreme Court may be appointed by the court on the application of the clerk, and may be removed at the pleasure of the court. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the life-time of the clerk or after his death, the clerk, and his estate, and the sureties in his official bond shall be liable; and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his life-time.

17 U.S.Stat. 330.

§ 679. Records of the old court of appeals.—The records and proceedings of the court of appeals, appointed previous to the adoption of the present Constitution, shall be kept in the office of the clerk of the Supreme Court, who shall give copies thereof to any person requiring and paying for them in the manner provided by law for giving copies of the records and proceedings of the Supreme Court; and such copies shall have like faith and credit with all other proceedings of said court.

1•U.S.Stat. 279.

§ 680. Marshal of the Supreme Court.—The marshal is entitled to receive a salary at the rate of three thousand five hundred dollars a year. He shall attend the court at its sessions; shall serve and execute all process and orders issuing from it, or made by the Chief Justice or an associate justice in pursuance of law; and shall take charge of all property of the United States used by the court or its members. With the approval of the Chief Justice he may appoint assistants and messengers to attend the court, with the compensation allowed to officers of the House of Representatives of similar grade.

14 U.S.Stat. 443; 2 id. 106; 1 id. 87.

§ 681. Duties of the reporter.—The reporter shall cause the decisions of the Supreme Court made during his office to be printed and published within eight months after they are made; and, within the same time, shall deliver three hundred copies of the volumes of said reports to the Secretary of the Interior. And he shall, in any year when he is so directed by the court, cause to be printed and published a second volume of said decisions, of which he shall deliver, in like manner and time, three hundred copies.

5 U.S.Stat. 545; 14 id. 51; 14 id. 191, (205); 14 id. 471.

§ 682. Reporter's salary and price of reports.—The reporter shall be entitled to receive from the Treasury an annual salary of twenty-five hundred dollars, when his report of said decisions constitutes one volume, and an additional sum of fifteen hundred dollars when, by direction of the court, he causes to be printed and published, in any year, a second volume. But said salary and compensation, respectively, shall be paid only when he causes such decisions to be printed, published, and delivered within the time and in the manner prescribed by law, and upon the condition that the volumes of said reports shall be sold by him to the public for a price not exceeding five dollars a volume.

5 U.S.Stat. 545; 14 id. 51; 14 id. 191, (205); 14 id. 471.

§ 683. Distribution of the Supreme Court reports.—The three hundred copies of said reports delivered to the Secretary of the Interior shall be distributed as follows: To the President, the justices of the Supreme Court, the circuit judges, the judges of the district courts, the judges of the Court of Claims, the judges of the supreme court of the District of Columbia, the judges of the several territorial courts, the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, the Postmaster-General, the Attorney-General, the Solicitor-General, the Secretary of the Senate, for the use of the Senate, the Clerk of the House of Representatives, for the use of the House of Representatives, the governors of the Territories, the Commissioner of Agriculture, the Commissioner of Internal Revenue, the Commissioner of Indian Affairs, the Commissioner of Pensions, the Commissioner of the General Land-Office, the Commissioner of Patents, the Commissioner of Customs, the

Commissioner of Education, the Paymaster-General, the First and Second Comptrollers of the Treasury, the First, Second, Third, Fourth, Fifth, and Sixth Auditors of the Treasury, the Solicitor of the Treasury, the Register of the Treasury, the Treasurer of the United States, and the heads of such other executive offices as may hereafter be provided by law, of equal grade with any of the said officers, each one copy; to the Secretary of the Senate, for the use of the standing committees of the Senate, ten copies; and to the Clerk of the House of Representatives, for the use of the standing committees of the House, twelve copies; and the residue of said copies shall be deposited in the Library of Congress, to become a part of said Library. The copies received by any officer under this section shall, in case of his death, resignation, or dismissal from office, be delivered up to his successor in office.

5 U.S.Stat. 545; 12 id. 245; 16 id. 291, (307); 15 id. 191, (205).

CHAPTER X.

SUPREME COURT—SESSIONS.

SECTION 684. Terms.

685. Adjournments for want of a quorum.

686. Preparatory orders made by less than a quorum.

§ 684. Terms.—The Supreme Court shall hold, at the seat of government, one term annually, commencing on the second Monday in October, and such adjourned or special terms as it may find necessary for the dispatch of business; and suits, proceedings, recognizances, and processes pending in or returnable to said court shall be tried, heard, and proceeded with as if the time of holding said sessions had not been hereby altered.

14 U.S.Stat. 209; 17 id. 419.

§ 685. Adjournments for want of quorum.—If, at any session of the Supreme Court, a quorum does not attend on the day appointed for holding it, the justices who do attend may adjourn the court from day to day for twenty days after said appointed time, unless there be sooner a quorum. If a quorum does not attend within said twenty days, the business of the court shall be continued over till the next appointed session; and if, during a term, after a quorum has assembled, less than that number attend on any day, the justices attending may adjourn the court from day to day until there is a quorum, or may adjourn without day.

2 U.S.Stat. 156; 4 id. 332.

§ 686. Preparatory orders made by less than a quorum.—The justices attending at any term when less than a quorum is present, may, within the twenty days mentioned in the preceding section, make all necessary orders touching any suit, proceeding, or process, depending in or returned to the court, preparatory to the hearing, trial, or decision thereof.

2 U.S.Stat. 156; 4 id. 323; 14 id. 209.

CHAPTER XI.

SUPREME COURT—JURISDICTION.

- SECTION** 687. Original jurisdiction.
 688. Writs of prohibition and mandamus.
 689. Issues of fact.
 690. Appellate jurisdiction.
 691. Judgments in circuit court on writ of error.
 692. Appeals in equity and admiralty cases.
 693. Review of decisions of circuit court on certificate of division of opinion.
 694. Cases pending in Supreme Court from middle and northern districts of Alabama.
 695. Appeals in prize causes.
 696. Appeals in prize causes remaining in circuit courts.
 697. Points certified on division of opinion in a circuit court.
 698. Transcripts on appeals.
 699. Writs of error and appeals, without reference to amount.
 700. Cases tried by the circuit court, without the intervention of a jury.
 701. Judgment or decree on review.
 702. Writs of error and appeals from territorial courts.
 703. When a territory becomes a State after judgment or decree in territorial court.
 704. Judgments and decrees of district courts in cases transferred from territorial courts.
 705. Judgments and decrees of supreme court of District of Columbia.
 706. Cases where matter in dispute exceeds \$100.
 707. Appeals from the Court of Claims.
 708. Time and manner of appeals from the Court of Claims.
 709. Judgments and decrees of State courts on writ of error.
 710. Precedence of writs of error to State courts in criminal cases.

§ 687. Original jurisdiction.—The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original, but not exclusive, jurisdiction. And it shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law

can have consistently with the law of nations; and original, but not exclusive, jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul or vice-consul is a party. [See §§ 4063-4066.]

1. U.S.Stat. 83.

Extent of, *Osborn v. U. S. Bank*, 9 Wheat. 821. Dependent on character of parties, *Georgia v. Madrazzo*, 1 Pet. 110; *State as party*, *Fowler v. Lindsey*, 3 Dall. 411; *U. S. v. Peters*, 5 Cranch 139; *Cohens v. Virginia*, 6 Wheat. 264; *Cherokee Nation v. Georgia*, 5 Pet. 1; *Ex parte Madrazzo*, 7 Pet. 627; *Texas v. White*, 7 Wall. 719; *Pennsylvania v. Quicksilver Co.*, 10 Wall. 556. Controversies between States, *New Jersey v. New York*, 5 Pet. 287; *Rhode Island v. Massachusetts*, 12 Pet. 657; 13 Pet. 23; 14 Pet. 210; 15 Pet. 233; 4 How. 591; *Missouri v. Iowa*, 7 How. 660; *Florida v. Georgia*, 17 How. 478; *Kentucky v. Gov. of Ohio*, 24 How. 66; *Virginia v. West Va.*, 11 Wall. 39. In equity, *Georgia v. Stanton*, 6 Wall. 50; *Pennsylvania v. Wheeling & B. B. Co.*, 18 How. 460. Injunction, *New York v. Connecticut*, 4 Dall. 1. Consuls, *U. S. v. Ravara*, 2 Dall. 298. Ambassadors, *U. S. v. Ortega*, 11 Wheat. 467.

§ 688. Writs of prohibition and mandamus.—The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul or vice-consul, is a party.

1 U.S.Stat. 80.

Prohibition, when it lies, *U. S. v. Peters*, 3 Dall. 121; *Ex parte Christy*, 3 How. 292. Purpose of, *U. S. v. Hoffman*, 4 Wall. 158; When will not lie, *Ex parte Gordon*, 1 Black. 503; *Ex parte War-mouth*, 7 Wall. 67; *Ex parte Graham*, 10 Wall. 541. Mandamus to circuit court, when granted, *Hayburn's case*, 2 Dall. 409; *Ex parte Crane*, 5 Pet. 190. When refused, *Bk of Columbia v. Sweeney*, 1 Pet. 567; *Ex parte Taylor*, 14 How. 12; *Ex parte Many*, 14 How. 25; *Ex parte Ransom v. New York*, 20 How. 583; *U. S. v. Addison*, 22 How. 183; *Ex parte Newman*, 14 Wall. 165. To district judge, when will issue, *U. S. v. Lawrence*, 3 Dall. 42; *Livingston v. Dorge-nois*, 7 Cranch 589; *Ex parte Bradstreet*, 4 Pet. 102; 6 Pet. 774; 7 Pet. 634; 8 Pet. 590; *Ex parte Roberts*, 6 Pet. 217; *Ex parte Davenport*, 6 Pet. 663; *Life and Fire Ins. Co. v. Adams*, 9 Pet. 571, 591; *Ex parte Hoyt*, 13 Pet. 279; *Stafford v. Union Bk of Louisiana*, 17 How. 282; *Mussina v. Cavazos*, 20 How. 289. When refused, *White v. U. S.*, 1 Black. 502. To restore attorney, *Ex parte Burr*, 9 Wheat. 529; *Ex parte Bradley*, 7 Wall. 379; *Ex parte Robinson*, 19 Wall. 505, 513. When not proper remedy, *Ex parte Whitney*, 13 Pet. 408. Nature of writ, *Ex parte Kentucky v. Dennison*, 24 How. 97. To justice of State court refused, *Ex parte Secombe*, 19 How. 15. To

ministerial officer when it lies, *Comm'r of Patents v. Whitely*, 4 Wall. 539; *Commonwealth v. Boutwell*, 13 Wall. 529. Showing required, *Ex parte Fleming*, 2 Wall. 759. When refused, *Ex parte De Groot*, 6 Wall. 497. To court of claims refused, *Ex parte Russell*, 13 Wall. 670. Jurisdiction governed by statute, *Ex parte McCardle*, 7 Wall. 506. Insufficient grounds, *Warner v. Norton*, 20 How. 461. Cases not brought by agreement, *Washington Co. v. Durant*, 7 Wall. 694. Statement, practice, *Avardano v. Gay*, 8 Wall. 376. Transcript, *Dred Scott v. Sandford*, 19 How. 400.

§ 689. Issues of fact.—The trial of issues of fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury.

1 U.S.Stat. 80.

§ 690. Appellate jurisdiction.—The Supreme Court shall have appellate jurisdiction in the cases hereinafter specially provided for.

1 U.S.Stat. 80. *Sample v. Hagar*, 4 Wall. 433.

§ 691. Judgments in circuit court on writ of error.—All final judgments of any circuit court, or of any district court acting as a circuit court, in civil actions brought there by original process, or removed there from courts of the several States, and all final judgments of any circuit court in civil actions removed there from any district court by appeal or writ of error, where the matter in dispute, exclusive of costs, exceeds the sum or value of two thousand dollars, may be re-examined and reversed or affirmed in the Supreme Court, upon a writ of error.

1 U.S.Stat. 84; 2 id. 244; 5 id. 393.

From circuit court, practice, *Wilson v. Daniel*, 3 Dall. 401; *Minor v. Tillotson*, 1 How. 287; *Matheson's Admr. v. Grant's Admr.*, 2 How. 279; *Bayard v. Lombard*, 9 How. 548. Exceptions, *Simpson v. Dall*, 3 Wall. 460; *U. S. v. McMasters*, 4 Wall. 682; *Thompson v. Riggs*, 5 Wall. 663. When error will not lie, *Connor v. Peugh's lessee*, 18 How. 395. From order, *McCargo v. Chapman*, 20 How. 555; *Pomeroy v. Bank of Indiana*, 1 Wall. 592; *Gregg v. Forsyth*, 2 Wall. 56; *Ins. Co. v. Barton*, 13 Wall. 603. Will not lie in criminal case, *Ex parte Gordon*, 1 Black 503. Cases stated, *Burr v. Des Moines R. R. & N. Co.*, 1 Wall. 99. On judgment on referee's report, *Heckers v. Fowler*, 2 Wall. 123. Right restricted to final judgment, *Barton v. Forsyth*, 5 Wall. 190. Judgment on demurrer, *Rogers v. Burlington*, 8 Wall. 654. Who may appeal, *Payne v. Niles*, 20 How. 219. Parties necessary, *Masterson v. Herndon*, 10 Wall. 416; *Germain v. Mason*, 12 Wall. 259; *Hampton v. Rouse*, 13 Wall. 187. Removal from district court, *Doswell v. De La Lange*, 20 How. 29; *Barton v. Forsyth*, 20 How. 534. Dismissal, *Kellogg v. Forsyth*, 24 How. 186; *Hecker v. Fowler*, 1 Black. 95; *U. S. v. Dashiell*, 3 Wall. 688; *New Orleans R. R. v. Morgan*, 10 Wall. 256. What reviewable, *Roberts v. Cooper*, 20 How. 467. Affirmance, *Stevens v. Gladding*, 19 How. 65; *Suydam v.*

Williamson, 20 How. 427; Taylor v. Morton, 2 Black 481; Marine Bk. v. Fulton Bk., 2 Wall. 252. Effect of affirmance, Cook v. Burnley, 11 Wall. 672. From district court, Durose v. U. S., 6 Cranch 318; Maybury v. Thompson, 5 How. 125. What not reviewable, McFaul v. Ramsey, 20 How. 527. Exceptions, practice, Harvey v. Tyler, 2 Wall. 328. Order not appealable, Sparrow v. Strong, 4 Wall. 584. Dismissal of, Overton v. Cheek, 22 How. 46; Sparrow v. Strong, 3 Wall. 103; Davidson v. Lanier, 4 Wall. 453. From supreme court of State, Brooks v. Norris, 11 How. 207. Functions of writ, Rice v. Minnesota R. R., 21 How. 82. Final judgment, what is, Holcombe v. McKusick, 20 How. 552. When writ lies, McClane v. Boon, 6 Wall. 244. When will not lie, Steamboat Burns, 9 Wall. 237. Notice, practice, O'Dowd v. Russell, 14 Wall. 402. What reviewable, Knox v. Exchange Bk., 12 Wall. 379. Dismissal, Moore v. Robbins, 18 Wall. 588; St. Clair Co. v. Lovington, 18 Wall. 628. Of District of Columbia, City of Washington v. Dennison, 6 Wall. 495. Amount in controversy, Williamson v. Kincaid, 4 Dall. 20; Course v. Stead, 4 Dall. 22; U. S. v. McDowell, 4 Cranch 316; Wise v. Columbia T. Co., 7 Cranch 276; Peyton v. Robertson, 9 Wheat. 527; Gordon v. Ogden, 3 Pet. 34; Smith T. v. Honey, 3 Pet. 469; U. S. v. Boxes of Sugar, 7 Pet. 453; Lee v. Lee, 8 Pet. 44; Hagan v. Foison, 10 Pet. 160; Knap v. Banks, 2 How. 73; Barry v. Mercein, 5 How. 119; U. S. v. Addison, 22 How. 174; Pratt v. Fitzhugh, 1 Black 271; DeKraft v. Barney, 2 Black 704; Lee v. Watson, 1 Wall. 337; Cooke v. U. S., 2 Wall. 218; Walker v. U. S., 4 Wall. 163; Merrill v. Petty, 16 Wall. 344; Richmond v. Milwaukee, 21 How. 391. Where set-off claimed, Ryan v. Bindley, 1 Wall. 66.

§ 692. Appeals in equity and admiralty cases.—

An appeal shall be allowed to the Supreme Court from all final decrees of any circuit court, or of any district court acting as a circuit court, in cases of equity, and of admiralty and maritime jurisdiction, where the matter in dispute, exclusive of costs, exceeds the sum or value of two thousand dollars, and the Supreme Court is required to receive, hear, and determine such appeals.

2 U.S.Stat. 244; 13 id. 310.

Remedy by, The San Pedro, 2 Wheat. 132. In equity cases, Conn. v. Penn, 5 Wheat. 424; Bk. of U. S. v. Daniel, 12 Pet. 32; Russell v. Southard, 12 How. 139; Mississippi & Mo. R. R. v. Ward, 2 Black 485. Jurisdiction dependent on law, The Lucy, 8 Wall. 307. Right regulated by statute, Sampson v. Welsh, 4 How. 207. Ex parte McCadle, 7 Wall. 506. Who may exercise right of, Steamboat Burns, 9 Wall. 237. Not conferred by consent, Ballance v. Forsyth, 21 How. 389; Washington Co. v. Durant, 7 Wall. 694; The Nonesuch, 9 Wall. 504. Appeal and error distinguished, Parish v. Ellis, 16 Pet. 451. Parties who must join, Masterson v. Herndon, 10 Wall. 416. Substituted parties, Herndon v. Howard, 9 Wall. 664. Time within which to appeal, The Protector, 11 Wall. 82. Citation, to whom, Bigler v. Waller, 12 Wall. 142. When appeal lies, Malarin v. U. S., 1 Wall. 282; The Rio Grande, 19 Wall. 178. When lies from district court, Gridley v. Westbrook, 23 How. 503; Morris's Cotton, 8 Wall. 507; Ex parte Robinson, 19 Wall. 513. Judge may allow, Rodd v.

Heartt, 17 Wall. 354. In cases of collision, *Nelson v. Leland*, 22 How. 46; *The Ship Marcellus*, 1 Black 414; *The Baltimore*, 8 Wall. 382. When will not lie, *Bayard v. Lombard*, 9 How. 530. From discretionary act of court, *Sheets v. Selden*, 7 Wall. 416; *Morgan v. Thornhill*, 11 Wall. 65; *Hall v. Allen*, 12 Wall. 452; *Mead v. Thompson*, 15 Wall. 635; *Coit v. Robinson*, 19 Wall. 274. Final judgment a decree only appealable, *Beebe v. Russell*, 19 How. 283; *Farrelly v. Woodfolk*, 19 How. 288; *U. S. v. Fossatt*, 21 How. 450; *Ex parte Warmouth*, 17 Wall. 64. Finality of decree, *Rubber Co. v. Good-year*, 6 Wall. 153. Decree, when final, *Wabash & Erie Can. v. Beers*, 1 Black 54; *Milwaukee etc. R. R. v. Souther*, 2 Wall. 440, 510; *Thompson v. Dean*, 7 Wall. 342; *French v. Shoemaker*, 12 Wall. 86; *Marin v. Lally*, 17 Wall. 14. Decree, when interlocutory, *Lea v. Kelly*, 15 Pet. 213; *Young v. Smith*, id. 287; *Forgay v. Conrad*, 6 How. 201; *Perkins v. Fourniquet*, id. 206; *Verden v. Coleman*, 18 How. 86; *Craighead v. Wilson*, id. 199; *Callan v. May*, 2 Black 541; *Humiston v. Stainthorpe*, 2 Wall. 106; *Moore v. Robbins*, 18 Wall. 588; *St. Clair Co. v. Lovingson*, id. 628; *The Lucille*, 19 Wall. 73. Depends on matter or amount in controversy, *U. S. v. Brig Union*, 4 Cranch 216; *U. S. v. Boxes of Sugar*, 7 Pet. 453; *Stratton v. Jarvis*, 8 Pet. 4; *Gruner v. U. S.*, 11 How. 163; *Spear v. Place*, id. 522; *Brown v. Shannon*, 20 How. 58; *Richmond v. Milwaukee*, 21 How. 80, 391; *The Grace Girdler*, 6 Wall. 441; *Merrill v. Petty*, 16 Wall. 344. Claims and demands united, *Rich v. Lambert*, 12 How. 347; *Shields v. Thomas*, 17 How. 3; *Clifton v. Sheldon*, 23 How. 481; *Seaver v. Bigelows*, 5 Wall. 208. Seaman's wages, *Oliver v. Alexander*, 6 Pet. 143. Practice, *U. S. v. Gomez*, 1 Wall. 690. Filing Transcript, id. 3 Wall. 752. Dismissal, *Jackson v. Ashton*, 8 Pet. 148; *Stafford v. Union Bk. of La.*, 16 How. 135; *Adams v. Law*, 16 How. 144; *Hudgins v. Kemp*, 18 How. 530; *Merriam v. Haas*, 3 Wall. 687. For want of jurisdiction, *Bk. of Alexandria v. Hooft*, 7 Pet. 168; *Udall v. Steamship Ohio*, 17 How. 17; *McMicken v. Perin*, 20 How. 133; *Edmonson v. Bloomshire*, 7 Wall. 806. For assignment of interest, *Cleveland v. Chamberlain*, 1 Black 419. For defect of parties, *Owings v. Kincannon*, 7 Pet. 399; *Day v. Washburn*, 23 How. 309; *Blossom v. Milwaukee R. R. Co.*, 1 Wall. 655. For defect in perfecting, *Barrel v. Transportation Co.*, 3 Wall. 424. For frivolous appeal, *The Douro*, 3 Wall. 564. Effect of, *Rogers v. Law*, 21 How. 526. Right of, *Latham's appeal*, 9 Wall. 145. Rehearing on, *U. S. v. Knight*, 1 Black 488. Affirmance, *Perkins v. Fourniquet*, 14 How. 328; *Miller v. U. S.*, 11 Wall. 268. On conflict of testimony, *Newell v. Norton*, 3 Wall. 267. Reversal, *U. S. v. Nourse*, 6 Pet. 470. For defect of parties, *Hoe v. Wilson*, 9 Wall. 501. When not reversed, *Sturgis v. Clough*, 1 Wall. 269.

§ 693. Review of decisions of circuit court on certificate of division of opinion.—Any final judgment or decree, in any civil suit or proceeding before a circuit court which was held, at the time, by a circuit justice and a circuit judge or a district judge, or by the circuit judge and a district judge, wherein the said judges certify, as provided by law, that their opinions were opposed upon any question which occurred on the trial or hearing of the said suit or proceeding, may be reviewed

and affirmed, or reversed or modified by the Supreme Court, on writ of error or appeal, according to the nature of the case, and subject to the provisions of law applicable to other writs of error or appeals in regard to bail and supersedeas. [See § 652.]

17 U.S.Stat. 196.

§ 694. Cases pending in Supreme Court from middle and northern districts of Alabama.—Nothing in the act of March three, eighteen hundred and seventy-three, relating to the circuit and district courts for the middle and northern districts of Alabama, shall affect the jurisdiction of the Supreme Court to hear and determine any cause or proceeding pending in said court at the date of said act on writ of error or appeal from the district courts of either of said districts.

17 U.S.Stat. 485.

§ 695. Appeals in prize causes.—An appeal shall be allowed to the Supreme Court from all final decrees of any district court in prize causes, where the matter in dispute, exclusive of costs, exceeds the sum or value of two thousand dollars; and shall be allowed, without reference to the value of the matter in dispute, on the certificate of the district judge that the adjudication involves a question of general importance. And the Supreme Court shall receive, hear, and determine such appeals, and shall always be open for the entry thereof. [See § 1009.]

13 U.S.Stat. 310; 2 id. 244. *The Admiral*, 3 Wall. 603; *Withenbury v. United States*, 5 Wall. 819; *The Alicia*, 7 Wall. 571.

§ 696. Appeals in prize causes remaining in circuit courts.—An appeal shall be allowed to the Supreme Court from all final decrees of any circuit court in prize causes depending therein on the thirtieth day of June, eighteen hundred and sixty-four, in the same manner and subject to the same conditions as appeals in prize causes from the district courts.

13 U.S.Stat. 310.

§ 697. Points certified on division of opinion in a circuit court.—When any question occurs on the hearing or trial of any criminal proceeding before a circuit court, upon which the judges are divided in opinion, and the point upon which they disagree is certified to the Supreme Court according to law, such point shall be finally decided by

the Supreme Court; and its decision and order in the premises shall be remitted to such circuit court, and be there entered of record, and shall have effect according to the nature of the said judgment and order. [See § 651 and cases cited.]

2 U.S.Stat. 159. *U. S. v. Tyler*, 7 Cranch 285; *U. S. v. Daniel*, 6 Wheat. 542; *U. S. v. Bailey*, 9 Pet. 267; *U. S. v. Briggs*, 5 How. 208; *U. S. v. Rosenbaum*, 7 Wall. 580.

§ 698. Transcripts on appeal.—Upon the appeal of any cause in equity, or of admiralty and maritime jurisdiction, or of prize or no prize, a transcript of the record, as directed by law to be made, and copies of the proofs, and of such entries and papers on file as may be necessary on the hearing of the appeal, shall be transmitted to the Supreme Court: *Provided*, That either the court below or the Supreme Court may order any original document or other evidence to be sent up, in addition to the copy of the record, or in lieu of a copy of a part thereof. And on such appeals no new evidence shall be received in the Supreme Court, except in admiralty and prize causes. [See § 750.]

2 U.S.Stat. 244; 10 id. 163; 13 id. 310. *Conn. v. Penn.*, 5 Wheat. 424; *Villabolas v. U. S.*, 6 How. 81; *U. S. v. Curry*, id. 106; *Steamer Virginia v. West*, 19 How. 182; *Mesa v. U. S.*, 2 Black 721; *U. S. v. Gomez*, 3 Wall. 763; *The Mabey*, 10 Wall. 419.

§ 699. Writs of error and appeals, without reference to amount.—A writ of error may be allowed to review any final judgment at law, and an appeal shall be allowed from any final decree in equity hereinafter mentioned, without regard to the sum or value in dispute:

First. Any final judgment at law or final decree in equity of any circuit court, or of any district court acting as a circuit court, or of the Supreme Court of the District of Columbia, or of any Territory, in any case touching *patent-rights or copyrights*.

16 U.S.Stat. 207, 215. *Hogg v. Emerson*, 6 How. 477; *Stimpson v. Baltimore & S. R. R. Co.*, 10 How. 346; *Sizer v. Many*, 16 How. 98; *Brown v. Shannon*, 20 How. 55.

Second. Any final judgment of a circuit court, or of any district court acting as a circuit court, in any civil action brought by the United States for the enforcement of any *revenue law* thereof.

5 U.S.Stat. 658. *Cary v. Curtis*, 3 How. 244; *U. S. v. Carr*, 8 How. 9; *U. S. v. Bromley*, 12 How. 88; *Mason v. Gamble*, 21 How. 390.

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Third. Any final judgment of a circuit court, or of any district court acting as a circuit court, in any civil action against any *officer of the revenue* for any act done by him in the performance of his official duty, or for the recovery of any money exacted by or paid to him which shall have been paid into the Treasury.

15 U.S.Stat. 44.

Fourth. Any final judgment at law or final decree in equity of any circuit court, or of any district court acting as a circuit court, in any case brought on account of the deprivation of any *right, privilege, or immunity* secured by the Constitution of the United States, or of any right or privilege of a citizen of the United States.

17 U.S.Stat. 13 ; 14 id. 27 ; 16 id. 144.

Fifth. Any final judgment of a circuit court, or of any district court acting as a circuit court, in any civil action brought by any person on account of injury to his person or property by any act done in furtherance of any *conspiracy* mentioned in section nineteen hundred and eighty, Title, "Civil Rights."

17 U.S.Stat. 13 ; 14 id. 29.

§ 700. Cases tried by the circuit court without the intervention of a jury.—When an issue of fact in any civil cause in a circuit court is tried and determined by the court without the intervention of a jury, according to section six hundred and forty-nine, the rulings of the court in the progress of the trial of the cause, if excepted to at the time, and duly presented by a bill of exceptions, may be reviewed by the Supreme Court upon a writ of error or upon appeal ; and when the finding is special the review may extend to the determination of the sufficiency of the facts found to support the judgment. [See § 649.]

13 U.S.Stat. 501—see Acts ; 1 id. 84 ; 2 id. 244.

Findings of court must be special, *Barnes v. Williams*, 11 Wheat. 415 ; *Prentice v. Zane*, 8 How. 470 ; *Suydam v. Williamson*, 20 How. 432 ; *Cuculler v. Emmerling*, 22 How. 83 ; *Norris v. Jackson*, 9 Wall. 125 ; *Flanders v. Tweed*, id. 425 ; *Copelin v. Ins. Co.*, id. 467 ; *Coddington v. Richardson*, 10 Wall. 516 ; *Smith v. Sac. Co.*, 11 Wall. 139 ; *Dirst v. Morris*, 14 Wall. 484 ; *Dickinson v. Planters Bk.*, 16 Wall. 250 ; *Insurance Co. v. Folsom*, 18 Wall. 237 ; *Town of Ohio v. Marcy*, id. 552. Agreed statement of facts, *Stimpson v. Baltimore etc. R. R. Co.*, 10 How. 329 ; *Graham v. Bayne*, 18 How. 62 ; *Kelsey v. Forsyth*, 21 How. 85 ; *Campbell v. Boyreau*, 21 How. 223 ; *Burr v. Des Moines Co.*, 1 Wall. 99 ; *Insurance Co. v. Tweed*, 7 Wall. 44 ; *Basset v. U. S.*, 9 Wall. 38 ; *Bethell v. Mathews*, 13 Wall. 1.

§ 701. Judgment or decree on review.—The Supreme Court may affirm, modify, or reverse any judgment, decree, or order of a circuit court, or district court acting as a circuit court, or of a district court in prize causes, lawfully brought before it for review, or may direct such judgment, decree, or order to be rendered, or such further proceedings to be had by the inferior court, as the justice of the case may require. The Supreme Court shall not issue execution in a cause removed before it from such courts, but shall send a special mandate to the inferior court to award execution thereupon.

17 U.S.Stat. 196 ; 1 id. 85 ; 2 id. 244 ; 13 id. 310.

Directing judgment, *Sheehy v. Mandeville*, 6 Cranch. 266 ; *U. S. Bk. v. Smith*, 11 Wheat. 182 ; *Mackey v. U. S.*, 10 Pet. 342 ; *U. S. v. Boyd*, 15 Pet. 209. Directing amendment, *Garland v. Davis*, 4 How. 131. Further proceedings, *Humphreys v. Leggett*, 9 How. 314. Dismissal, *Cutler v. Rae*, 7 How. 732 ; *U. S. v. Huckabee*, 16 Wall. 435. Awarding new trial, *Lanusse v. Barker*, 3 Wheat. 147 ; *Fowler v. City of Alexandria*, 11 Wheat. 324 ; *Barnes v. Williams*, id. 415 ; *McArthur v. Porter*, 1 Pet. 626 ; *Farrar v. U. S.*, 5 Pet. 389 ; *U. S. v. Hawkins*, 10 Pet. 125 ; *Graham v. Bayne*, 18 How. 63 ; *Ins. Co. v. Piaggio*, 16 Wall. 378 ; *Walbrun v. Babbitt*, 16 Wall. 577. Execution of mandate, *Martin v. Hunter*, 1 Wheat. 304. Ex parte *Sibald v. U. S.*, 12 Pet. 492 ; *West v. Brashear*, 14 Pet. 51. Ex parte *Dubuque & Pacific R. R.*, 1 Wall. 69 ; *Milwaukee & M. R. R. Co. v. Soutter*, 2 Wall. 510. Ex parte *Morris & Johnson*, 9 Wall. 607 ; *Ins. Cos. v. Boykin*, 12 Wall. 433. Writ when abated, *McNulty v. Batty*, 10 How. 81. Effect of repealing act. Ex parte, *McCardle*, 7 Wall. 506. Appeal and error distinguished, *Suydam v. Williamson*, 20 How. 440 ; *Taylor v. Morton*, 2 Black 481.

§ 702. Writs of error and appeals from territorial courts.—The final judgments and decrees of the supreme court of any Territory, except the Territory of Washington, in cases where the value of the matter in dispute, exclusive of costs, to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars, may be reviewed and reversed or affirmed in the Supreme Court, upon writ of error or appeal, in the same manner and under the same regulations as the final judgments and decrees of a circuit court. In the Territory of Washington the value of the matter in dispute must exceed two thousand dollars, exclusive of costs. And any final judgment or decree of the supreme court of said Territory in any cause (a) the Constitution or a statute or treaty of the United States is brought in question may be reviewed in like manner. [See §§ 1909, 1911.]

(a) The word *where* omitted in the Roll.

Utah 9 U.S.Stat. 455. New Mexico 9 U.S.Stat. 449. Washington 10 U.S.Stat. 175. Dakota 12 U.S.Stat. 241. Arizona 12 U.S.Stat. 665. Idaho 12 U.S.Stat. 811. Montana 13 U.S.Stat. 88. Wyoming 15 U.S. Stat. 180. Iowa Sheppard v. Wilson, 5 How. 210; Bartemeyer v. Iowa, 14 Wall. 26. New Mexico United States v. Vigil, 10 Wall. 423. Montana Wells v. McGregor, 13 Wall. 188.

§ 703. When a Territory becomes a State after judgment or decree in territorial court.—In all cases where the judgment or decree of any court of a Territory might be reviewed by the Supreme Court on writ of error or appeal, such writ of error or appeal may be taken, within the time and in the manner provided by law, notwithstanding such Territory has, after such judgment or decree, been admitted as a State; and the Supreme Court shall direct the mandate to such court as the nature of the writ of error or appeal requires.

11 U.S.Stat. 328. Hunt v. Palao, 4 How. 589; McNulty v. Batty, 10 How. 81; Preston v. Bracken, id. 82; Freeborn v. Smith, 2 Wall. 160.

§ 704. Judgments and decrees of district courts in cases transferred from territorial courts.—The judgments or decrees of any district court, in cases transferred to it from the superior court of any Territory, upon the admission of such Territory as a State, under sections five hundred and sixty-seven and five hundred and sixty-eight, may be reviewed and reversed or affirmed upon writs of error sued out of, or appeals taken to, the Supreme Court, in the same manner as if such judgments or decrees had been rendered in said superior court of such Territory. And the mandates and all writs necessary to the exercise of the appellate jurisdiction of the Supreme Court in such cases shall be directed to such district court, which shall cause the same to be duly executed and obeyed. [See §§ 567, 569.]

9 U.S.Stat. 128; 9 id. 212. Express Co. v. Kountze Bros., 8 Wall. 342.

§ 705. Judgments and decrees of supreme court of District of Columbia.—The final judgment or decree of the supreme court of the District of Columbia, in any case where the matter in dispute, exclusive of costs, exceeds the value of one thousand dollars, may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon writ of error or appeal, in the

same manner and under the same regulations as are provided in cases of writs of error on judgments, or appeals from decrees rendered in a circuit court.

Writ of error, *U. S. v. Moore*, 3 Cranch 159; *Young v. Bk. of Alexandria*, 4 Cranch 384; *Peyton v. Robertson*, 9 Wheat. 527; *Brown v. Wiley*, 4 Wall. 165; *Railroad Co. v. Church*, 19 Wall. 62. Appeal, *Carter v. Cutting*, 8 Cranch 251; *Garnett v. U. S.*, 11 Wall. 256; *Smith v. Mason*, 14 Wall. 419.

§ 706. Cases where matter in dispute exceeds \$100.—The writ of error or appeal provided by the preceding section may be allowed in any case where the value of the matter in dispute, exclusive of costs, is less than one thousand dollars, but more than one hundred dollars, upon the petition in writing of either party, accompanied by a copy of the proceedings complained of, and an assignment of errors, exhibited to any justice of the Supreme Court, if said justice is of opinion that such errors involve questions of law of such extensive operation as to render a decision of them by the Supreme Court desirable. The allowance in such case shall be by the written order of said justice, directed to the clerk of the supreme court of said District, to allow the appeal or issue the writ of error.

3 U.S.Stat. 261; 12 id. 763, 764. *Lee v. Lee*, 8 Pet. 44; *Campbell v. Reed*, 2 Wall. 198.

§ 707. Appeals from the Court of Claims.—An appeal to the Supreme Court shall be allowed, on behalf of the United States, from all judgments of the Court of Claims adverse to the United States, and on behalf of the plaintiff in any case where the amount in controversy exceeds three thousand dollars, or where his claim is forfeited to the United States by the judgment of said court, as provided in section one thousand and eighty-nine.

15 U.S.Stat. 75; 12 id. 766, 767. *De Groot v. U. S.*, 5 Wall. 419; *U. S. v. Adams*, 6 Wall. 101; *Ex parte Zellner*, 9 Wall. 244; *U. S. v. Ayres*, 9 Wall. 608; *U. S. v. Adams*, 9 Wall. 661; *Ex parte Roberts*, 15 Wall. 384.

§ 708. Time and manner of appeals from the Court of Claims.—All appeals from the Court of Claims shall be taken within ninety days after the judgment is rendered, and shall be allowed under such regulations as the Supreme Court may direct.

12. U.S.Stat. 766, 767; 15 id. 75.

§ 709. Judgments and decrees of State courts on writ of error.—A final judgment or decree in any suit in the highest court of a State, in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. (a)

The Supreme Court may (b) reverse, modify, or affirm the judgment or decree of such State court, and may, at their discretion, award execution, or remand the same to the court from which it was removed by the writ.

14 U.S.Stat. 386; 1 id. 85.

Jurisdiction not conferred by consent, *Mills v. Brown*, 16 Pet. 525. General requisites of, *Crowell v. Randall*, 10 Pet. 368; *Chouteau v. Marguerite*, 12 Pet. 507; *West Tennessee Bk. v. Citizens' Bk.*, 13 Wall. 432; *Commercial Bk. v. Rochester*, 15 Wall. 639; *Smith v. Adsit*, 16 Wall. 185. Grounds to be shown by record, *Miller v. Nicholls*, 4 Wheat. 311; *Hickie v. Starke*, 1 Pet. 94; *Harris v. Dennie*, 3 Pet. 292; *Davis v. Packard*, 6 Pet. 41; *Ocean Ins. Co. v. Polleys*, 13 Pet. 137; *Armstrong v. Treasurer*, 16 Pet. 281; *Mills v. Brown*, 16 Pet. 525; *Maney v. Porter*, 4 How. 55; *Commercial Bk. v. Buckingham*, 5 How. 317; *Smith v. Hunter*, 7 How. 738; *Lawler v. Walker*, 14 How. 149; *Cousin v. Blanc*, 19 How. 202; *Taylor v. Morton*, 2 Black, 481; *Bridge Proprietors v. Hoboken Co.*, 1 Wall. 142;

(a) The following words were stricken out by Amendatory Act of February 18th, 1875: *and the proceeding upon reversal shall be the same, except that the Supreme Court may, at their discretion, proceed to a final decision of the case, and award execution, or remand the same to the court from which it was so removed.* [See § 1017.]

(b) The word *re-affirm* was taken from this section by Act of February 18th, 1875.

Gibson v. Chouteau, 8 Wall. 314; Cockcroft v. Vose, 14 Wall. 5; Steines v. Franklin Co., 14 Wall. 15; Kennebec R. R. v. Portland R. R., 14 Wall. 23. Certificate of clerk, Reed v. Marsh, 13 Pet. 153; Parmelee v. Lawrence, 11 Wall. 36; Insurance Co. v. The Treasurer, 11 Wall. 204. Protection of right under treaty or statute, Menard v. Aspasia, 5 Pet. 505; New Orleans v. DeArmas, 9 Pet. 224; Williams v. Oliver, 12 How. 111.

Construction.—Construction of treaty, Owings v. Norwood, 5 Cranch 344; Martin v. Hunter, 1 Wheat. 304; Moreland v. Page, 20 How. 522; Boggs v. Mining Co., 3 Wall. 304; Townsend v. Greely, 5 Wall. 326; Maguire v. Tyler, 8 Wall. 650. Right and title to lands, Gordon v. Caldcleugh, 3 Cranch 268; Mathews v. Zane, 4 Cranch 382; McCluny v. Silliman, 6 Wheat. 598; Buel v. Van Ness, 8 Wheat. 312; Fulton v. McAfee, 16 Pet. 149; City of Mobile v. Eslava, id. 234; Crowell v. Randell, id. 368; Chouteau v. Eckhardt, 2 How. 344; McDonogh v. Millandon, 3 How. 693; Walker v. Taylor, 5 How. 64; Scott v. Jones, 5 How. 343; Kennedy v. Hunt, 7 How. 586; Neilson v. Lagow, id. 772; Almonester v. Kenton, 9 How. 1; Barbarie v. Eslava, id. 421; Henderson v. Tennessee, 10 How. 311; Lessieur v. Price, 12 How. 59.

Personal Rights.—Right to freedom, Chouteau v. Marguerite, 12 Pet. 507; Strader v. Graham, 10 How. 82. To writ of habeas corpus, Holmes v. Jennison, 14 Pet. 540. To religious liberty, Permoli v. First Municipality, 3 How. 589.

Constitutional construction, Hepburn v. Ellzey, 2 Cranch 445; Satterlee v. Mathewson, 2 Pet. 380; Jackson v. Lamphire, 3 Pet. 280; Gibbons v. Ogden, 6 Wheat. 448; Ableman v. Booth, 21 How. 506; Farney v. Towle, 1 Black 350; Hoyt v. Sheldon, 1 Black 518; Ex parte Milligan, 4 Wall. 113; Railroad Co. v. Rock, 4 Wall. 177; Walker v. Villavaso, 6 Wall. 124; Downham v. Alexandria, 9 Wall. 659; Railroad Co. v. McClure, 10 Wall. 511; West Tennessee Bk. v. Citizens' Bk., 14 Wall. 9; Palmer v. Marston, id. 10; Sevier v. Haskell, id. 12; Caperton v. Ballard, 14 Wall. 238; Delmas v. Ins. Co., id. 661; Railroads v. Richmond, 15 Wall. 3; Taylor v. Taintor, 16 Wall. 366. **Statutes,** construction and constitutionality of, Williams v. Norris, 12 Wheat. 117; Willson v. Blackbird Creek Co., 2 Pet. 245; Weston v. City of Charleston, 2 Pet. 449; Craig v. Missouri, 4 Pet. 410; Fisher v. Cockerell, 5 Pet. 248; McBride v. Hoey, 11 Pet. 167; Commercial Bk. v. Griffith, 14 Pet. 56; Mitchell v. Lenox, 14 Pet. 49; Commercial Bk. v. Buckingham, 5 How. 317; Scott v. Jones, id. 343; Clements v. Berry, 14 How. 398; Congden v. Goodman, 2 Black 574; Poydras de la Lande v. Treasurer, 18 How. 192; Michigan C. R. R. v. Michigan S. R. R., 19 How. 379; Withers v. Buckley, 20 How. 84; Beers v. Arkansas, id. 527; Lytte v. Arkansas, 22 How. 193; Medberry v. Ohio, 24 How. 413; Porter v. Foley, 24 How. 415; Attorney-Genl. v. Federal Street Meeting House, 1 Black 262; The Binghampton Bridge, 3 Wall. 51; Green v. Van Buskirk, 5 Wall. 307; The Banks v. The Mayor, 7 Wall. 16; Austin v. The Aldermen, 7 Wall. 694; Furman v. Nichol, 8 Wall. 44; Worthy v. The Commissioners, 9 Wall. 611; Bethell v. Demaret, 10 Wall. 637; Runkin v. The State, 11 Wall. 380; Knox v. Exchange Bk., 12 Wall. 379; People v. Central R. R., 12 Wall. 455; Caperton v. Bowyer, 14 Wall. 216; Marquese v. Bloom, 16 Wall. 351; Steamboat Co. v. Chase, 16 Wall. 522; Crapo v. Kelly, 16 Wall. 610. Statute creating contract, Piqua Branch Bank v. Knoop, 16 How. 369; Solomons v. Graham, 15 Wall. 208. Laws of Territory, Miners' Bk. v. Iowa, 12 How. 1; Messenger

v. Mason, 10 Wall. 507. Acts of Congress, construction, Inglee v. Coolidge, 2 Wheat. 363; Montgomery v. Hernandez, 12 Wheat. 129; Ross v. Barland, 1 Pet. 655; Strader v. Baldwin, 9 How. 261; Barbarie v. Mobile, id. 451; Gill v. Oliver, 11 How. 529; Kanouse v. Martin, 14 How. 23; Oalcote v. Stanton, 18 How. 243; Bell v. Hearne, 19 How. 252; Burke v. Gaines, 19 How. 388; Wynn v. Morris, 20 How. 3; Berthold v. McDonald, 22 How. 334; Maguire v. Tyler, 1 Black 195; Minnesota v. Batchelder, 1 Wall. 109; Buck v. Colbath, 3 Wall. 334; McGuire v. The Commonwealth, id. 382; Lewis v. Campan, 3 Wall. 106; Langflier v. Hanley, 4 Wall. 209; Ryan v. Thomas, id. 603; Rector v. Ashley, 6 Wall. 142; Reichart v. Felps, id. 160; Aldrich v. Aetna Co., 8 Wall. 491; Carpenter v. Williams, 9 Wall. 785; Trebilcock v. Wilson, 12 Wall. 687; Dooley v. Smith, 13 Wall. 604; Tyler v. Maguire, 17 Wall. 253. Questions of evidence, Mackay v. Dillon, 4 How. 421; White v. Wright, 22 How. 19; Dupasseur v. Rochereau, 21 Wall. 130; Railroad Co. v. Maryland, 21 Wall. 456; Edwards v. Elliott, 21 Wall. 532; Moore v. Mississippi, 21 Wall. 636; Atherton, Ex. v. Fowler, 3 Centl. L. J. 60; Long v. Converse, 8 Ch. L. N. 121; S. C. 13 Alb. L. J. 118.

Practice, remedy by writ of error, Verden v. Coleman, 22 How. 192; Webster v. Reed, 11 How. 437. Right of, Twichell v. The Commonwealth, 7 Wall. 321. Waiver of right, Erwin v. Lowry, 7 How. 172. When operates as supersedeas, O'Dowd v. Russell, 14 Wall. 402; Review Hamilton Co. v. Massachusetts, 6 Wall. 632; Tarver v. Keach, 15 Wall. 67; The Victory, 6 Wall. 382. Remanding cause for further proceedings, Winn v. Jackson, 12 Wheat. 135; Pepper v. Dunlap, 5 How. 51. Dismissal, Christ Church v. Philadelphia, 20 How. 26; Millingar v. Hartup, 6 Wall. 258; Gleason v. Florida, 9 Wall. 779; Bartemeyer v. Iowa, 14 Wall. 26; Hurley v. Street, 14 Wall. 85; Pennywit v. Eaton, 15 Wall. 380. For defect of parties, Railroad v. Johnson, 15 Wall. 8. Interlocutory decree, Reddall v. Bryan, 24 How. 420. Final judgment, what is, Weston v. Charleston, 2 Pet. 449; Olney v. Arnold, 3 Dall. 308. Adverse party, Poydras de la Lande v. Treasurer, 17 How. 1. Writ to what court issued, Miller v. Joseph, 17 Wall. 655. When jurisdiction does not attach, Randall v. Howard, 2 Black 585; Day v. Gallup, 2 Wall. 97.

§ 710. Precedence of writs of error to State courts in criminal cases.—Cases on writ of error, to revise the judgment of a State court in any criminal case, shall have precedence, on the docket of the Supreme Court, of all cases to which the Government of the United States is not a party, excepting only such cases as the court, in its discretion, may decide to be of public importance.

14 U.S.Stat. 172; 1 id. 85; 14 id. 386.

CHAPTER XII

PROVISIONS COMMON TO MORE THAN ONE COURT OR JUDGE.

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§ 711. Exclusive jurisdiction of courts of United States.—The jurisdiction vested in the courts of the United States, in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States :

First. Of all crimes and offenses cognizable under the authority of the United States.

1 U.S.Stat. 76, 78. *Martin v. Hunter's Lessee*, 1 Wheat. 329 ; *Houston v. Moore*, 5 Wheat. 24, 29 ; *Prigg v. Pennsylvania*, 16 Pet. 658 ; *Ely v. Peck*, 7 Conn. 239 ; *The State v. Adams*, 4 Black 146 ; *Haney v. Sharp*, 1 Dana 442 ; *U. S. v. Lathrop*, 17 Johns. 4 ; *U. S. v. Campbell*, Tappan (Ohio) 29 ; *State v. McBride*, 1 Rice (S. C.) 400 ; *Commonwealth v. Feely*, 1 Va. Cases 1 ; *Jackson v. Rose*, id. 34.

Second. Of all suits for penalties and forfeitures incurred under the laws of the United States.

1 U.S.Stat. 76. *Ketland v. The Cassius*, 2 Dall. 365 ; *Martin v. Hunter's Lessee*, 1 Wheat. 329 ; *Houston v. Moore*, 5 Wheat. 24, 29 ; *Prigg v. Pennsylvania*, 16 Pet. 658 ; *Hall v. Warren*, 2 McLean 332 ; *Ely v. Peck*, 7 Conn. 239 ; *The State v. Adams*, 4 Black 146 ; *Haney v. Sharp*, 1 Dana 442 ; *U. S. v. Lathrop*, 17 Johns. 4 ; *U. S. v. Campbell*, Tappan (Ohio) 29 ; *State v. McBride*, 1 Rice (S. C.) 400 ; *Commonwealth v. Feely*, 1 Va. Cases 1 ; *Jackson v. Rose*, id. 34.

Third. Of all civil causes of admiralty and maritime jurisdiction ; saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it.

1 U.S.Stat. 76. *The Hine v. Trevor*, 4 Wall. 555 ; *The Belfast*, 7 Wall. 624 ; *People v. Steamer America*, 34 Cal. 680 ; *Crawford v. Bark Caroline Reed*, 42 Cal. 473.

Fourth. Of all seizures under the laws of the United States, on land or on waters not within admiralty and maritime jurisdiction.

1 U.S.Stat. 76 ; 14 id. 111 ; 14 id. 483 ; 12 id. 319. *Slocum v. Mayberry*, 2 Wheat. 1 ; *Gelston v. Hoyt*, 3 Wheat. 246.

Fifth. Of all cases arising under the patent-right or copyright laws of the United States.

16 U.S.Stat. 206, 207, 215; 14 id. 517.

Sixth. Of all matters and proceedings in bankruptcy.

Seventh. Of all controversies of a civil nature, where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens.

1 U.S.Stat. 80. *Georgia v. Brailsford*, 2 Dall. 402; *Chisholm v. Georgia*, 2 Dall. 419; *Hollingsworth v. Virginia*, 3 Dall. 378; *New York v. Connecticut*, 4 Dall. 1; *Governor of Georgia v. Madrazo*, 1 Pet. 110; *New Jersey v. New York*, 5 Pet. 284; *Rhode Island v. Massachusetts*, 12 Pet. 657; *Florida v. Georgia*, 11 How. 293.

Eighth. (a)

§ 712. Oath of United States judges.—The justices of the Supreme Court, the circuit judges, and the district judges, hereafter appointed, shall take the following oath before they proceed to perform the duties of their respective offices: "I, ———, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as ———, according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States: So help me God."

1 U.S.Stat. 76.

§ 713. Judges prohibited from practicing law.—It shall not be lawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law. And any person offending against the prohibition of this section shall be deemed guilty of a high misdemeanor.

2 U.S.Stat. 782.

§ 714. Judges resigning entitled, in certain cases, to salary for life.—When any judge of any court of the United States resigns his office, after having held his commission as such at least ten years, and having attained the

(a) § 711 was amended by Act of February 18th, 1875, by striking out the eighth paragraph, which read as follows: *Of all suits against ambassadors, or other public ministers, or their domestics, or domestic servants, or against consuls or vice consuls*

age of seventy years, he shall, during the residue of his natural life, receive the same salary which was by law payable to him at the time of his resignation.

16 U.S.Stat. 45.

§ 715. Criers of the courts, attendants on juries.—The circuit and district courts may appoint criers for their courts, to be allowed the sum of two dollars per day, and the marshals may appoint such a number of persons, not exceeding five, as the judges of their respective courts may determine, to attend upon the grand and other juries, and for other necessary purposes, who shall be allowed for their services the sum of two dollars per day, to be paid by and included in the accounts of the marshal, out of any money of the United States in his hands. Such compensation shall be paid only for actual attendance, and when both courts are in session at the same time, only for attendance on one court.

10 U.S.Stat. 165 ; 14 id. 432.

§ 716. Power to issue writs.—The Supreme Court and the circuit and district courts shall have power to issue writs of scire facias. They shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.

1 U.S.Stat. 81 ; 1 id. 334.

Mandamus, *Kendall v. U. S.*, 12 Pet. 524 ; *Decatur v. Paulding*, 14 Pet. 497 ; *Brashear v. Mason*, 6 How. 92 ; *U. S. v. Guthrie*, 17 How. 284 ; *Commissioner of Patents v. Whiteley*, 4 Wall. 522 ; *Ex parte De Groot*, 6 Wall. 497. Power of court ancillary, not original, *Marbury v. Madison*, 1 Cranch 137 ; *McIntire v. Wood*, 7 id. 504 ; *McClung v. Silliman*, 6 Wheat. 598 ; *Bath Co. v. Amy*, 13 Wall. 244 ; *Graham v. Norton*, 15 Wall. 427. Practice and procedure, *U. S. v. U. P. R. R. Co.*, 2 Dill. 527. Amendments, *Supervisors v. Durant*, 9 Wall. 736. Abatement on death of party, *U. S. v. Boutwell*, 17 Wall. 604. Extent or relief on review, *Butz v. City of Muscatine*, 8 Wall. 575. Not to control official discretion, *Gaines v. Thompson*, 7 Wall. 347 ; *Secretary v. McGarrahan*, 9 Wall. 298 ; *Litchfield v. The Register etc.*, 9 Wall. 575 ; *Commonwealth v. Boutwell*, 13 Wall. 526 ; *Brown v. U. S.*, 6 Court of Cl. 171. Or judicial discretion, *Ex parte Newman*, 14 Wall. 152. To restore attorney, *Ex parte Secombe*, 19 How. 9 ; *Ex parte Garland*, 4 Wall. 379 ; *Ex parte Bradley*, 7 Wall. 364 ; *Ex parte Robinson*, 19 Wall. 505. To reinstate action, *Insurance Co. v. Comstock*, 16 Wall. 258. To compel performance of official duties, *Knox Co. v. Aspinwall*, 24 How. 376 ; *U. S. v. The Commissioner*, 6 Wall. 563. To enforce levy of tax, *Supervisors v. U. S.*, 4 Wall. 435.

Von Hoffman v. City of Quincy, 4 Wall. 535; Riggs v. Johnson Co., 6 Wall. 186; U. S. v. Keokuk, 6 Wall. 514; Walkley v. City of Muscatine, 6 Wall. 481; Benbow v. Iowa City, 7 Wall. 313; The Mayor v. Lord, 9 Wall. 409; Britton v. Platte City, 2 Dill. 1; U. S. v. Board of Supervisors, 2 Biss. 77; U. S. v. City of Sterling, 2 Biss. 408. Injunction, notice requisite, New York v. Connecticut, 4 Dall. 1; Perry v. Parker, 1 Woodb. & M. 280; Brown v. P. M. S. S. Co., 5 Blatch. 525. Statement of grounds, Georgia v. Brailsford, 2 Dall. 402. Proceedings and practice, Boyle v. Zacharie, 6 Pet. 658. Power of judge in vacation, Gray v. Chicago etc. R. R., 1 Woolw. 63. When refused, Bonaparte v. Camden & Amboy R. R., 1 Baldw. 205; Lawrence v. Bowman, 1 McAll. 419. To restrain proceedings at law, Marine Ins. Co. v. Hodgson, 7 Cranch 332; Parker v. Judges of Circuit Court, 12 Wheat. 561; Campbell's case, 1 Abb. U. S. 185; Irving v. Hughes, 7 Am. Law Reg., N. S.; Diggs v. Wolcott, 4 Cranch 179; Fisk v. U. P. R. R. Co., 10 Blatch. 518; Muscatine v. Railroad Co., 1 Dill. 536; Merchants N. Bk. v. Leland, 38 How. Pr. 31. In State courts, official acts, discretion, Osborne v. Bank of U. S., 9 Wheat. 738; Mississippi v. Johnson, 4 Wall. 475; Gaines v. Thompson, 7 Wall. 347; Litchfield v. Register etc., 9 Wall. 575; Roback v. Taylor, 2 Bond 36; Mason v. Rollins, 2 Biss. 99. Certiorari, on denomination of record, Clark v. Hackett, 1 Black 77; Stearns v. U. S., 4 Wall. 1; U. S. v. Adams, 9 Wall. 661; Hodges v. Vaughan, 19 Wall. 12; The Rio Grande, id. 178. Return of writ, Fenemore v. U. S., 3 Dall. 362; Stewart v. Ingle, 9 Wheat. 526. Review under, Ex parte Vallandigham, 1 Wall. 243; Ex parte Dugan, 2 Wall. 134; Re Martin, 5 Blatch. 303. Supersedeas, when issued, Hogan v. Ross, 11 How. 294; Ex parte Milwaukee R. R. Co., 5 Wall. 188. When appeal operates as, Hudgins v. Kemp, 18 How. 530. When writ of error, U. S. v. Addison, 22 How. 174. As to joint defendant, Hodgson v. Mountz, 1 Cranch C. C. 366. Effect of, Slaughter-house cases, 10 Wall. 273. Security, French v. Shoemaker, 12 Wall. 86; Bigler v. Waller, id. 142. Execution, U. S. Bank v. Halstead, 10 Wheat. 56; See 12 Blatchf. 503.

§ 717. Writs of ne exeat.—Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be granted by the Supreme Court; and by any circuit justice or circuit judge, in cases where they might be granted by the circuit court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States.

1 U. S. Stat. 334; 16 id. 44. Gernon v. Boscaine, 2 Wash. C. C. 130; Graham v. Stucken, 4 Blatch. 50.

§ 718. Temporary restraining orders.—Whenever notice is given of a motion for an injunction out of a circuit or district court, the court or judge thereof may, if there appears to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the

decision upon the motion ; and such order may be granted with or without security, in the discretion of the court or judge.

17 U.S.Stat. 197.

§ 719. Injunctions.—Writs of injunction may be granted by any justice of the Supreme Court in cases where they might be granted by the Supreme Court ; and by any judge of a circuit court in cases where they might be granted by such court. But no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order in any cause pending in the circuit to which he is allotted, elsewhere than within such circuit, or at such place outside of the same as the parties may stipulate in writing, except when it cannot be heard by the circuit judge of the circuit or the district judge of the district. And an injunction shall not be issued by a district judge, as one of the judges of the circuit court, in any case where a party has had a reasonable time to apply to the circuit court for the writ ; nor shall any injunction so issued by a district judge continue longer than to the circuit court next ensuing, unless so ordered by the circuit court.

1 U.S.Stat. 334 ; 2 id. 418 ; 16 id. 44 ; 17 id. 197.

§ 720. Injunction to stay proceedings in State courts.—The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. [See § 5106.]

1 U.S.Stat. 334. *Diggs v. Wolcott*, 4 Cranch 179 ; *Peck v. Jenness*, 7 How. 625 ; *Watson v. Jones*, 13 Wall. 719.

§ 721. Laws of the States, rules of decision.—The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply.

1 U.S.Stat. 92.

Constitutional and statutory construction, *Green v. Neal*, 6 Pet. 291 ; *Luther v. Borden*, 7 How. 1 ; *Van Rensselaer v. Kearney*, 11 How. 297 ; *Carroll v. Carroll's Lessee*, 16 How. 275 ; *Morgan v. Curtenius*, 20 How. 1 ; *Jefferson Br. Bk. v. Skelly*, 1 Black 436 ; *Conway v. Taylor*, id. 603 ; *Leffingwell v. Warren*, 2 Black 599 ; *Bridge*

Proprietors v. Hoboken Co., 1 Wall. 145; *Gelpecke v. City of Dubuque*, id. 175; *Christy v. Pridgeon*, 4 Wall. 203; *Mitchell v. Burlington*, id. 274; *Nichols v. Levy*, 5 Wall. 433. Not to extend to points of procedure or practice, *Brown v. Van Braam*, 3 Dall. 344; *Robinson v. Campbell*, 3 Wheat. 212; *Wayman v. Southard*, 10 Wheat. 1; *Ross v. Duval*, 13 Pet. 45; *Fenn v. Holme*, 21 How. 481; *Sheirburn v. de Cordova*, 24 How. 423. Limited to laws strictly local, *Swift v. Tyson*, 16 Pet. 1. Restricted to civil cases, *U. S. v. Reid*, 12 How. 361. What not embraced, *Boyce v. Tabb*, 18 Wall. 546. Rule of property, *Suydam v. Williamson*, 24 How. 427; *Chicago v. Robbins*, 2 Black. 418. As to private acts, *Williamson v. Barry*, 8 How. 495. Construction of will, *Lane v. Vick*, 3 How. 464. Validity of contract, *Delmas v. Ins. Co.*, 14 Wall. 661. Question as to jurisdiction, *Jeter v. Hewitt*, 22 How. 352. As to rule of evidence, *Hausknecht v. Claypool*, 1 Black. 431. As to general principles of equity, *Neves v. Scott*, 13 How. 268. As to relief, *Ewing v. City of St. Louis*, 5 Wall. 419.

§ 722. Proceedings, civil and criminal, in vindication of civil rights.—The jurisdiction in civil and criminal matters conferred on the district and circuit courts by the provisions of this Title, and of Title "Civil Rights," and of Title "Crimes," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

14 U.S.Stat. 27; 16 id. 144.

§ 723. When suits of equity may be maintained.—Suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate, and complete remedy may be had at law.

1 U.S.Stat. 82. *Robinson v. Campbell*, 3 Wheat. 212; *Boyce v. Grundy*, 3 Pet. 210; *Ex parte Tillinghast*, 4 Pet. 108; *Clark v. Smith*, 13 Pet. 195; *U. S. v. Price*, 9 How. 83; *Bennett v. Butterworth*, 11 How. 669; *Ex parte Secombe*, 19 How. 9; *Hipp v. Babin*, 19 How. 271; *Hungerford v. Sigerson*, 20 How. 156; *Parker v. Winnipiseogee*

Co., 2 Black 545; *Watson v. Sutherland*, 5 Wall. 74; *Thompson v. Railroad Cos.*, 6 Wall. 134.

§ 724. Power to order production of books and writings in actions at law.—In the trial of actions at law, the courts of the United States may, on motion and due notice thereof, require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery. If a plaintiff fails to comply with such order, the court may, on motion, give the like judgment for the defendant as in cases of nonsuit; and if a defendant fails to comply with such order, the court may, on motion, give judgment against him by default.

1 U.S.Stat. 82. *Geyger's Lessee v. Geyger*, 2 Dall. 332; *Thompson v. Selden*, 20 How. 194; *Maye v. Carbery*, 2 Cr. C. C. 336; *Bank U. S. v. Kurtz*, 2 Cr. C. C. 842; *Hylton's Lessee v. Brown*, 1 Wash. C. C. 298; *Bas v. Steele*, 3 id. 381; *Dunham v. Riley*, 4 id. 126; *Vasse v. Miffin*, 4 id. 519; *Jacques v. Collins*, 2 Blatch. 23; *Isagi v. Brown*, 1 Curt. C. C. 401.

§ 725. Power to impose oaths and punish contempts.—The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts.

1 U.S.Stat. 83; 4 id. 487. *Ex parte Garland*, 4 Wall. 378.

§ 726. New trials.—All of the said courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law.

1 U.S.Stat. 83. *Warner v. Norton*, 20 How. 448; *Zantzinger v. Weightman*, 2 Cr. C. C. 478; *Lloyd v. Scott*, 4 id. 206; *U. S. v. White*, 5 id. 38; *U. S. v. Keen*, 1 McLean 429; *U. S. v. Conner*, 3 id. 573; *U. S. v. Maccomb*, 5 id. 286; *U. S. v. Wonson*, 1 Gall. 5; *U. S. v. Gibert*, 2 Sumn. 19; *Cunningham v. Bell*, 5 Mas. 161; *U. S. v.*

Halberstadt, Gilp. 262; Rochell v. Phillips, Hemp. 22; Parker v. Lewis, Hemp. 72; U. S. v. Beaty, Hemp. 487; U. S. v. Harding, 1 Wall. jr. 127; Clark v. Manufacturers' Ins. Co., 2 Wood. & M. 472.

§ 727. Power to hold to security for the peace and good behavior.—The judges of the Supreme Court and of the circuit and district courts, the commissioners of the circuit courts, and the judges and other magistrates of the several States who are or may be authorized by law to make arrest for offenses against the United States, shall have the like authority to hold to security of the peace, and for good behavior, in cases arising under the Constitution and laws of the United States, as may be lawfully exercised by any judge or justice of the peace of the respective States, in cases cognizable before them.

1 U.S.Stat. 609; 1 id. 91; 1 id. 334; 5 id. 516; 12 id. 387; 16 id. 44.

§ 728. Power to enforce awards of foreign consuls, etc., in certain cases.—The district and circuit courts, and the commissioners of the circuit courts, shall have power to carry into effect, according to the true intent and meaning thereof, the award, or arbitration, or decree of any consul, vice-consul, or commercial agent of any foreign nation, made or rendered by virtue of authority conferred on him as such consul, vice-consul, or commercial agent, to sit as judge or arbitrator in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to his charge; application for the exercise of such power being first made to such court or commissioner by petition of such consul, vice-consul, or commercial agent. And said courts and commissioners may issue all proper remedial process, mesne and final, to carry into full effect such award, arbitration, or decree, and to enforce obedience thereto, by imprisonment in the jail or other place of confinement in the district in which the United States may lawfully imprison any person arrested under the authority of the United States, until such award, arbitration, or decree is complied with, or the parties are otherwise discharged therefrom, by the consent in writing of such consul, vice-consul, or commercial agent, or his successor in office, or by the authority of the foreign government appointing such consul, vice-consul, or commercial agent: *Provided, however,* That the expenses of the said imprisonment, and maintenance of the prisoners, and the cost of

the proceedings, shall be borne by such foreign government, or by its consul, vice-consul, or commercial agent requiring such imprisonment. The marshals of the United States shall serve all such process, and do all other acts necessary and proper to carry into effect the premises, under the authority of the said courts and commissioners.

9 U.S.Stat. 78.

§ 729. Offenses punishable with death, where tried.—The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience.

1 U.S.Stat. 88; 12 id. 589.

§ 730. Offenses on the high seas, etc., where triable.—The trial of all offenses committed upon the high seas or elsewhere, out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought.

1 U.S.Stat. 113; 3 id. 448; 3 id. 600; 4 id. 115, 118; 9 id. 175. U. S. v. Jackalow, 1 Black 484; U. S. v. Baker, 5 Blatch. 6.

§ 731. Offenses begun in one district and completed in another.—When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein.

14 U.S.Stat. 484.

§ 732. Suits for pecuniary penalties and forfeitures, where to be brought.—All pecuniary penalties and forfeitures may be sued for and recovered either in the district where they accrue, or in the district where the offender is found.

5 U.S.Stat. 322; 14 id. 111, 145; 13 id. 239, 305.

§ 733. Suits for internal revenue taxes, where to be brought.—Taxes accruing under any law providing internal revenue may be sued for and recovered either in the district where the liability for such tax occurs, or in the district where the delinquent resides.

14 U.S.Stat. 111.

§ 734. Seizures, where cognizable.—Proceedings on seizures, for forfeiture under any law of the United States, made on the high seas, may be prosecuted in any district into which the property so seized is brought and proceedings instituted. Proceedings on such seizures made within any district shall be prosecuted in the district where the seizure is made, except in cases where it is otherwise provided.

1 U.S.Stat. 76; 14 id. 111; 13 id. 240; 14 id. 483; 12 id. 256, 257, 258; 12 id. 319. *Jennings v. Carson*, 4 Cranch 2; *Ship Richmond v. U. S.*, 9 Cranch 102; *Sloop Abby*, 1 Mason 360; *Schooner Bolena*, 1 Gallis. 75; *The Washington*, 4 Blatch. 101; *Brig Little Ann*, 1 Paine 40.

§ 735. Captures of insurrectionary property, where cognizable.—Proceedings for the condemnation of any property captured, (a) whether on the high seas or elsewhere out of the limits of any judicial district, or within any district, on account of its being purchased or acquired, sold or given, with intent to use or employ the same, or to suffer it to be used or employed, in aiding, abetting, or promoting an insurrection against the Government of the United States, or knowingly so used or employed by the owner thereof, or with his consent, may be prosecuted in any district where the same may be seized, or into which it may be taken and proceedings first instituted.

12 U.S.Stat. 319. *Insurance Co. v. U. S.*, 6 Wall. 759.

§ 736. Proceedings to enjoin Comptroller of the Currency.—All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located.

13 U.S.Stat. 115, 116.

§ 737. When a part of several defendants cannot be served.—When there are several defendants in any suit at law or in equity, and one or more of them are neither inhabitants of nor found within the district in which the suit is brought, and do not voluntarily appear, the court may entertain jurisdiction, and proceed to the trial and adjudication of the suit between the parties who are prop-

(a) The words *as prize* were stricken out by amendment of February 18th, 1875.

erly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process nor voluntarily appearing to answer; and non-joinder of parties who are not inhabitants of nor found within the district, as aforesaid, shall not constitute matter of abatement or objection to the suit.

5 U.S.Stat. 321. *Bank of Vicksburg v. Slocumb*, 14 Pet. 60; *Louisville R. R. Co. v. Letson*, 2 How. 556; *Union Bank v. Stafford*, 12 How. 327; *Hagan v. Walker*, 14 How. 36; *Rundle v. Delaware and R. C. Co.*, 14 How. 95; *Nor. Indiana R. R. v. Michigan Central R. R.*, 15 How. 233; *Shields v. Barrow*, 17 How. 130; *Coiron v. Millaudon*, 19 How. 115; *Clearwater v. Meredith*, 21 How. 489; *Barney v. Baltimore City*, 6 Wall. 285; *Taylor v. Cook*, 2 McLean 516; *Cooper v. Gordon*, 4 McLean 6.

§ 738. Suits in equity against absent defendants to subject property in the district.—When any defendant in a suit in equity to enforce any legal or equitable lien or claim against real or personal property within the district where the suit is brought is not an inhabitant of nor found within the said district, and does not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant to appear, plead, answer, or demur to the complainant's bill at a certain day, therein to be designated; and the said order shall be served on such absent defendant, if practicable, wherever found, or, where such personal service is not practicable, shall be published in such manner as the court shall direct. If such absent defendant does not appear, plead, answer, or demur within the time so limited, or within some further time to be allowed by the court in its discretion, it shall be lawful for the court, upon proof of the service or publication of the said order, and of the performance of the directions contained therein, to entertain jurisdiction, and proceed to the hearing and adjudication of such suit, in the same manner as if such absent defendant had been served with process within the said district. But the said adjudication shall, as regards such absent defendant without appearance, affect his property within such district only.

17 U.S.Stat. 198.

§ 739. Suits against inhabitants of United States to be brought where they reside or are found.—Except in the cases provided in the next three sections, no person shall be arrested in one district for trial in another,

in any civil action before a circuit or district court; and except in the said cases and the cases provided by the preceding section, no civil suit shall be brought before either of said courts against an inhabitant of the United States, by any original process, in any other district than that of which he is an inhabitant, or in which he is found at the time of serving the writ.

1 U.S.Stat. 79; 11 id. 272; 17 id. 198. Pollard et al. v. Dwight, 4 Cranch 421; Logan v. Patrick, 5 Cranch 288; Gracie v. Palmer, 8 Wheat. 699; Toland v. Sprague, 12 Pet. 300; Levy v. Fitzpatrick, 15 Pet. 167; Herndon v. Ridgway, 17 How. 424; Harrison v. Rowan, 1 Pet. C. C. 489; Segee v. Thomas, 3 Blatch. 11; Moffat v. Soley, 2 Paine 103; Flanders v. Aetna Ins. Co., 3 Mason 158; Picquet v. Swan, 5 Mason 35.

§ 740. Suits not of a local nature in States containing several districts.—When a State contains more than one district, every suit not of a local nature, in the circuit or district courts thereof, against a single defendant, inhabitant of such State, must be brought in the district where he resides; but if there are two or more defendants, residing in different districts of the State, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides. The clerk issuing the duplicate writ shall indorse thereon that it is a true copy of a writ sued out of the court of the proper district; and such original and duplicate writs, when executed and returned into the office from which they issue, shall constitute and be proceeded on as one suit; and upon any judgment or decree rendered therein, execution may be issued, directed to the marshal of any district in the same State.

11 U.S.Stat. 272; 12 id. 662.

§ 741. Suits of a local nature in States containing several districts.—In suits of a local nature, where the defendant resides in a different district, in the same State, from that in which the suit is brought, the plaintiff may have original and final process against him, directed to the marshal of the district in which he resides.

11 U.S.Stat. 272.

§ 742. When land lies in different districts of same State.—Any suit of a local nature, at law or in equity, where the land or other subject-matter of a fixed

character lies partly in one district and partly in another, within the same State, may be brought in the circuit or district court of either district; and the court in which it is brought shall have jurisdiction to hear and decide it, and to cause mesne or final process to be issued and executed, as fully as if the said subject matter were wholly within the district for which such court is constituted.

11 U.S.Stat. 272.

§ 743. *In Indiana.*—In the district of Indiana all actions of which the circuit and district courts have jurisdiction may be instituted in said courts, respectively, held at New Albany and Evansville, in the first instance, by filing the proper pleadings or other papers in the offices of the deputy clerks performing the duties of clerks of said courts respectively; and all proper and lawful process shall issue therefrom in the same manner as from other circuit and district courts in like cases.

16 U.S.Stat. 473.

§ 744. *In Iowa.*—In the district of Iowa all suits not of a local nature in the district court against a single defendant, inhabitant of such State, must be brought in the division of the district where he resides; but if there are two or more defendants, residing in different divisions of the district, such suits may be brought in either division, and duplicate writs may be sent to the other defendants. The clerk issuing the duplicate writ shall indorse thereon that it is a true copy of a writ sued out of the court in the proper division of the district; and the original and duplicate writs, when executed and returned into the office from which they issue, shall constitute and be proceeded in as one suit. All issues of fact in such suits shall be tried at a term of the court held in the division where the suit is so brought.

9 U.S.Stat. 410, 411; 16 id. 174.

§ 745. *In Kentucky.*—In the district of Kentucky the clerks of the circuit and district courts, respectively, upon issuing original process in a civil action, shall make it returnable to the court nearest to the county of the residence of the defendant, or of that defendant whose county is nearest a court, if he have information sufficient, and shall immediately, upon payment by the plaintiff of his fees accrued, send the papers filed to the clerk of the court

to which the process is made returnable; and whenever the process is not thus made returnable, any defendant may, upon motion, on or before the calling of the cause, have it transferred to the court to which it should have been sent had the clerk known the residence of the defendant when the action was brought.

12 U.S.Stat. 387.

§ 746. Causes not discontinued by new term.—When the trial or hearing of any cause, civil or criminal, in a circuit or district court, has been commenced and is in progress before a jury or the court, it shall not be stayed or discontinued by the arrival of the time fixed by law for another session of said court; and the court may proceed therein and bring it to a conclusion, in the same manner and with the same effect as if another stated term of the court had not intervened.

10 U.S.Stat. 620.

§ 747. Parties may plead their own causes.—In all the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein.

1 U.S.Stat. 92.

§ 748. Officers forbidden to practice as attorneys.—No clerk, assistant or deputy clerk, of any territorial, district, or circuit court, or of the Court of Claims, or the Supreme Court of the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as a solicitor, proctor, attorney, or counsel in any cause depending in either of said courts, or in any district for which he is acting as such officer.

17 U.S.Stat. 411.

§ 749. Penalty.—Whosoever violates the preceding section shall be stricken from the roll of attorneys by the court, upon complaint, upon which the respondent shall have due notice, and be heard in his defense; and in the case of a marshal or deputy marshal so acting, he shall be recommended by the court for dismissal from office.

17 U.S.Stat. 411.

§ 750. Final record.—In equity and admiralty causes

only the process, pleadings, and decree, and such orders and memorandums as may be necessary to show the jurisdiction of the court and regularity of the proceedings, shall be entered upon the final record. [See § 698.]

10 U.S.Stat. 163.

CHAPTER XIII.

HABEAS CORPUS.

- SECTION 751.** Power of courts to issue writs of *habeas corpus*.
 752. Power of judges to grant writs of *habeas corpus*.
 753. Writs of *habeas corpus* when prisoner is in jail.
 754. Application for the writ of *habeas corpus*.
 755. Allowance and direction of the writ.
 756. Time of return.
 757. Form of return.
 758. Body of the party to be produced.
 759. Day for hearing.
 760. Denial of return, counter-allegations, amendments.
 761. Summary hearing; disposition of party.
 762. In cases involving the law of nations, notice to be served on State attorney-general.
 763. Appeals in cases of *habeas corpus* to circuit court.
 764. Appeal to Supreme Court.
 765. Appeals, how taken.
 766. Pending proceedings in certain cases, action by State authority void.

§ 751. Power to issue.—The Supreme Court and the circuit and district courts shall have power to issue writs of *habeas corpus*.

1 U.S.Stat. 81; 16 id. 44; 4 id. 634; 14 id. 385; 5 id. 539.

Limitation of right to writ, *Ex parte Dorr*, 3 How. 103. Who may issue, *U. S. v. Hamilton*, 3 Dall. 17; *Ex parte Burford*, 3 Cranch 448; *Ex parte Bollman*, 4 Cranch 75; *Ex parte Kearney*, 7 Wheat. 38; *Ex parte Watkins*, 7 Pet. 568; *Ex parte Dorr*, 3 How. 103; *Barry v. Mercein*, 5 How. 103; *Ex parte Milligan*, 4 Wall. 2; *Ex parte Keeler*, Hempst. 306; *Greathouse's case*, 2 Abb. U. S. 382; *Re Callicot*, 8 Blatch. 89; *Ex parte Des Rochers*, 1 McAll. 68; *Ex parte Jenkins*, 2 Wall. jr. 521; *Ex parte Smith*, 3 McLean 121; *Ex parte Sifford*, 5 Am. Law Reg. 659; *Ex parte McCann*, 14 id. 158. Single judge may issue, *Ex parte Barnes*, 1 Sprague 133. Issued only in aid of jurisdiction, *Ex parte Milburn*, 9 Pet. 704; *Ex parte Barry*, 2 How. 65; *Ex parte Metzger*, 5 How. 176; *Ex parte Kaine*, 14 How. 103. When will be issued, *U. S. v. Williamson*, 3 Am. Law Reg. 729; *Meade v. Deputy-Marshall*, 1 Brock. 324; *U. S. v. Anderson*, Cook. 143; *Ex parte Pleasants*, 4 Cranch C. C. 314; *U. S. v. French*, 1 Gall. 1; *Ex parte Turner*, 6 Int. Rev. Rec. 147; *Ex parte Cheney*, 5 Law Rep. 19; *Norris v. Newton*, 5 McLean 92; *Ex parte Robinson*, 6 id. 355. When not, *Ex parte Wilson*, 6 Cranch 52; *Ex parte Everts*, 7 Am. Law Reg. 79; *U. S. v. Rector*, 5 McLean 174. What reviewable under writ, *Bennett v. Bennett*, 1 Deady 299; *Re McDonald*, 1 Lowell 100. In extradition cases, *Veremartre's case*, 3 Law Rep. N. S. 603. *Matter*

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of Heilbronn, 12 Id. 65; *Ex parte Van Aernam*, 3 Blatch. 160; *Ex parte Smith*, 8 McLean 121. Appeal in cases of, *Holmes v. Jennison*, 14 Pet. 540; *Ex parte Wells*, 18 How. 307; *Ex parte McCardle*, 6 Wall. 318; 7 Wall. 506; *Ex parte Yerger*, 8 Wall. 85; *Ex parte Lange*, 18 Wall. 163; *In Re Henrich*, 5 Blatch. 414.

§ 752. Power of judges to grant.—The several justices and judges of the said courts, within their respective jurisdictions, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty.

1 U.S.Stat. 81; 16 Id. 44; 4 Id. 634; 14 Id. 385; 5 Id. 539.

§ 753. When prisoner is in jail.—The writ of habeas corpus shall in no case extend to a prisoner in jail, unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the Constitution or of a law or treaty of the United States; or, being a subject or citizen of a foreign state, and domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; or unless it is necessary to bring the prisoner into court to testify.

1 U.S.Stat. 81; 4 Id. 634; 14 Id. 385; 5 Id. 539. *Ex parte Dorr*, 3 How. 103; *Ex parte Barnes*, 1 Sprague, 133.

§ 754. Application for the writ.—Application for a writ of habeas corpus shall be made to the court, or justice, or judge authorized to issue the same, by complaint in writing, signed by the person for whose relief it is intended, setting forth the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known. The facts set forth in the complaint shall be verified by the oath of the person making the application.

14 U.S.Stat. 385.

§ 755. Allowance and direction of the writ.—The court, or justice, or judge to whom such application is made, shall forthwith award a writ of habeas corpus,

unless it appears from the petition itself that the party is not entitled thereto. The writ shall be directed to the person in whose custody the party is detained.

14 U.S.Stat. 385. *Ex parte Watkins*, 3 Pet. 193; *Ex parte Milligan*, 4 Wall. 110.

§ 756. Time of return.—Any person to whom such writ is directed shall make due return thereof within three days thereafter, unless the party be detained beyond the distance of twenty miles; and if beyond that distance and not beyond a distance of a hundred miles, within ten days; and if beyond the distance of a hundred miles, within twenty days.

14 U.S.Stat. 385.

§ 757. Form of return.—The person to whom the writ is directed shall certify to the court, or justice, or judge before whom it is returnable the true cause of the detention of such party.

14 U.S.Stat. 385.

§ 758. Body of the party to be produced.—The person making the return shall at the same time bring the body of the party before the judge who granted the writ.

14 U.S.Stat. 385.

§ 759. Day for hearing.—When the writ is returned, a day shall be set for the hearing of the cause, not exceeding five days thereafter, unless the party petitioning requests a longer time.

14 U.S.Stat. 385.

§ 760. Denial of return.—The petitioner or the party imprisoned or restrained may deny any of the facts set forth in the return, or may allege any other facts that may be material in the case. Said denials or allegations shall be under oath. The return and all suggestions made against it may be amended, by leave of the court, or justice, or judge, before or after the same are filed, so that thereby the material facts may be ascertained.

14 U.S.Stat. 385.

§ 761. Summary hearing; disposition of party.—The court, or justice, or judge shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require.

14 U.S.Stat. 385.

§ 762. In cases involving the law of nations—notice.—When a writ of habeas corpus is issued in the case of any prisoner who, being a subject or citizen of a foreign State and domiciled therein, is committed or confined, or in custody, by or under the authority or law of any one of the United States, or process founded thereon, on account of any act done or omitted under any alleged right, title, authority, privilege, protection, or exemption, claimed under the commission or order or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations, notice of the said proceeding, to be prescribed by the court, or justice, or judge, at the time of granting said writ, shall be served on the attorney-general or other officer prosecuting the pleas of said State, and due proof of such service shall be made to the court, or justice, or judge before the hearing.

5 U.S.Stat. 539.

§ 763. Appeals to circuit court.—From the final decision of any court, justice, or judge inferior to the circuit court, upon an application for a writ of habeas corpus or upon such writ when issued, an appeal may be taken to the circuit court for the district in which the cause is heard :

1. In the case of any person alleged to be restrained of his liberty in violation of the Constitution, or of any law or treaty of the United States.

2. In the case of any prisoner who, being a subject or citizen of a foreign state, and domiciled therein, is committed, or confined, or in custody by or under the authority or law of the United States, or of any State, or process founded thereon, for or on account of any act done or omitted under any alleged right, title, authority, privilege, protection, or exemption, set up or claimed under the commission, order, or sanction of any foreign state or sovereignty, the validity and effect whereof depend upon the law of nations, or under color thereof.

5 U.S.Stat. 539; 14 id. 385; 15 id. 44. *Ex parte McCardle*, 6 Wall. 818; 8. C. 7 Wall. 506. *Ex parte Yerger*, 8 Wall. 85.

§ 764. Appeal to Supreme Court.—From the final decision of such circuit court an appeal may be taken to the Supreme Court in the cases described in the last clause of the preceding section.

5 U.S.Stat. 539.

§ 765. Appeals, how taken.—The appeals allowed by the two preceding sections shall be taken on such terms, and under such regulations and orders, as well for the custody and appearance of the person alleged to be in prison, or confined, or restrained of his liberty, as for sending up to the appellate tribunal a transcript of the petition, writ of habeas corpus, return thereto, and other proceedings, as may be prescribed by the Supreme Court, or, in default thereof, by the court or judge hearing the cause.

5 U.S.Stat. 539 ; 14 id. 385.

§ 766. Pending proceedings, action by State authority void.—Pending the proceedings or appeal in the cases mentioned in the three preceding sections, and until final judgment therein, and after final judgment of discharge, any proceeding against the person so imprisoned or confined or restrained of his liberty, in any State court, or by or under the authority of any State, for any matter so heard and determined, or in process of being heard and determined, under such writ of habeas corpus, shall be deemed null and void.

5 U.S.Stat. 539 ; 14 id. 385.

See *In re Stupp*, 12 Blatchf. 503.

CHAPTER XIV.

DISTRICT ATTORNEYS, MARSHALS, AND CLERKS.

- SECTION 707. District attorneys.
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770. Salaries of district attorneys.
771. Duties of district attorneys.
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773. Returns of district attorneys to Solicitor of the Treasury.
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777. Georgia, (N. D.) marshal's office in.
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785. Marshal's bond to remain after judgment as further security.
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787. Duties of marshal.
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789. In case of death of the marshals, deputies to continue.
790. Marshals and deputy marshals, when removed or office expires, may execute process in their hands.
791. Marshal's returns to the Solicitor of the Treasury.
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793. Vacancies in office of district attorney and marshal, how filled temporarily.
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797. Clerk to forward to Solicitor of the Treasury a list of judgments.
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799. Oaths to persons identifying papers in admiralty causes, when administered by clerks.

§ 767. District attorneys.—There shall be appointed in each district, except in the middle district of Alabama, and the northern district of Georgia, and the western district of South Carolina, a person learned in the law, to act as attorney for the United States in such district. The district attorney of the northern district of Alabama shall perform the duties of district attorney of the middle district of said State; and the district attorney of the southern district of Georgia shall perform the duties of district attorney of the northern district of said State; and the district attorney of the eastern district of South Carolina shall perform the duties of district attorney for the western district of said State.

1 U.S.Stat. 92. Ala. 3 U.S.Stat. 565; 4 id. 10; 5 id. 316. Ark. 5 U.S.Stat. 51; 9 id. 595. Ga. 9 U.S.Stat. 281. Fla. 5 U.S.Stat. 788; 9 id. 131. Ill. 3 U.S.Stat. 503; 10 id. 607. Ind. 3 U.S.Stat. 391. Iowa 5 U.S.Stat. 789. Kans. 12 U.S.Stat. 128. La. 14 U.S.Stat. 300. Mich. 5 U.S.Stat. 62; 12 id. 661. Minn. 11 U.S.Stat. 285. Miss. 3 U.S.Stat. 413; 5 id. 248. Mo. 3 U.S.Stat. 653; 11 id. 198. Nebr. 15 U.S.Stat. 5. Nev. 13 U.S.Stat. 440. N. Y. 3 U.S.Stat. 235; 13 id. 438. N. C. 1 U.S.Stat. 126; 17 id. 217. Ohio 2 U.S.Stat. 202; 10 id. 605. Oreg. 11 U.S.Stat. 437. Pa. 3 U.S.Stat. 463. Tenn. 2 U.S.Stat. 165; 5 id. 250; 5 id. 313. Tex. 9 U.S.Stat. 1; 11 id. 165. Vt. 1 U.S.Stat. 197. Va. 16 U.S.Stat. 404. W. Va. 3 U.S.Stat. 478, 479; 4 id. 48; 13 id. 124. Wis. 9 U.S.Stat. 67; 16 id. 172.

§ 768. Iowa, district attorney.—The district attorney of the district of Iowa shall perform the duties of the district attorney for all of the divisions of said district.

9 U.S.Stat. 412; 11 id. 437, 438; 16 id. 174.

§ 769. Term and oath of district attorneys.—District attorneys shall be appointed for a term of four years, and their commissions shall cease and expire at the expiration of four years from their respective dates. And every district attorney, before entering upon his office, shall be sworn to a faithful execution thereof.

1 U.S.Stat. 92; 3 id. 582.

§ 770. Salaries of district attorneys.—The district attorney for the southern district of New York is entitled to receive quarterly, for all his services, a salary, at the rate of six thousand dollars a year. For extra services the district attorney for the district of California is entitled to receive a salary at the rate of five hundred dollars a year, and the district attorneys for all other districts at the rate of two hundred dollars a year.

N. Y. (S. D.) 12 U.S.Stat. 317. Cal. 9 U.S.Stat. 522. Districts in 1841, 5 U.S.Stat. 427. Ark. (W. D.) 9 U.S.Stat. 595. Fla. (N. D.) 5 U.S.Stat. 798. Fla. (S. D.) 9 U.S.Stat. 131. Iowa 5 U.S.Stat. 789. Kans. 12 U.S.Stat. 128. Mich. (W. D.) 12 U.S.Stat. 661. Minn. 11 U.S.Stat. 285. Nebr. 17 U.S.Stat. 337. N. Y. (E. D.) 13 U.S.Stat. 436. Ohio (S. D.) 10 U.S.Stat. 605. Oreg. 11 U.S.Stat. 437. Nev. 15 U.S.Stat. 109. Texas (E. D.) 9 U.S.Stat. 1. Texas (W. D.) 11 U.S.Stat. 165. W. Va. 3 U.S.Stat. 478, 479; 4 id. 48; 13 id. 124. Wis. 9 U.S.Stat. 57; 16 id. 172.

§ 771. Duties of district attorneys.—It shall be the duty of every district attorney to prosecute, in his district, all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States are concerned, and, unless otherwise instructed by the Secretary of the Treasury, to appear in behalf of the defendants in all suits or proceedings pending in his district against collectors, or other officers of the revenue, for any act done by them or for the recovery of any money exacted by or paid to such officers, and by them paid into the Treasury.

1 U.S.Stat. 92; 12 id. 741. *Levy Court v. Ringgold*, 5 Pet. 451; *U. S. v. Corrie*, 13 Law Reporter N. S. 145; *U. S. v. McAvoy*, 4 Blatch. 418; *U. S. v. Stowell*, 2 Curt. C. O. 153; *The Anna*, Blatch. Pr. Cas. 337; *The Peterhoff*, id. 463; *U. S. v. Ingersoll*, Crabbe 135.

§ 772. Statement of suits.—Every district attorney shall, on instituting any suit for the recovery of any fine, penalty, or forfeiture, immediately transmit to the Solicitor of the Treasury a statement thereof.

4 U.S.Stat. 415.

§ 773. Returns of district attorneys to Treasury.—Every district attorney shall, immediately after the end of every term of the circuit and district courts for his district, forward to the Solicitor of the Treasury, except in the cases provided for in the next section, a full and particular statement accompanied by the certificate of the clerks of said courts, respectively, of all causes pending in said courts, and of all causes decided therein during such term, in which the United States are party. He shall also, on the first day of October in each year, make a return to said Solicitor of the number of suits and proceedings commenced, pending, and determined within his district during the fiscal year next preceding the date of such return, showing the date when such proceeding or suit in each case was commenced. If the determination thereof has been delayed or continued beyond the usual or reason-

able period, the reasons must be set forth, and a statement must be made of the measures taken by the district attorney to press such proceedings or suits to a close.

4 U.S.Stat. 414; 12 id. 741; 14 id. 471, 472.

§ 774. Returns of, to Commissioner of Internal Revenue.—When any suit or proceeding arising under the internal revenue laws, to which the United States are party, or any suit or proceeding against a collector or other officer of the internal revenue, wherein a district attorney appears, is commenced, the attorney for the district in which it is brought shall immediately report to the Commissioner of Internal Revenue the full particulars relating to the same; and he shall, immediately after the end of each term of the court in which such suit or proceeding is pending, forward to the said Commissioner a full and particular statement of its condition.

14 U.S.Stat. 471, 472.

§ 775. Reports by district attorney.—Each district attorney shall, immediately after the end of every term in which any suit for moneys due on account of the Post-Office Department has been pending in his district, forward to the Department of Justice a statement of any judgment or order made, or step taken in the same, during such term, accompanied by a certificate of the clerk, showing the parties to and amount of every such judgment, with such other information as the Department of Justice may require. And the said attorney shall direct speedy and effectual execution upon said judgment, and the United States marshal to whom the same is directed shall make returns of the proceedings thereon to the Department of Justice, at such times as it may direct.

5 U.S.Stat. 83; 17 id. 324.

§ 776. Marshals.—A marshal shall be appointed in each district, except in the middle district of Alabama, and the northern district of Georgia, and the western district of South Carolina. The marshal of the southern district of Alabama shall perform the duties of marshal of the middle district of said State, and shall keep an office at Montgomery, in said middle district. The marshal of the southern district of Georgia shall perform the duties of marshal of the northern district of said State. The marshal of the eastern district of South Carolina shall per-

form the duties of marshal of the western district of said State.

1 U.S.Stat. 87. Ala. 3 U.S.Stat. 565; 4 id. 399; 5 id. 316. Ark. 5 U.S.Stat. 51; 9 id. 595. Ga. 9 U.S.Stat. 281. Fla. 5 U.S.Stat. 788; 9 id. 131. Ill. 3 U.S.Stat. 503; 10 id. 607. Ind. 3 U.S.Stat. 391. Iowa 5 U.S.Stat. 789. Kans. 12 U.S.Stat. 128. La. 14 U.S.Stat. 300. Mich. 5 U.S.Stat. 62; 12 id. 661. Minn. 11 U.S.Stat. 285. Miss. 3 U.S.Stat. 413; 5 id. 248. Mo. 3 U.S.Stat. 653; 11 id. 198. Nebr. 15 U.S.Stat. 5. Nev. 13 U.S.Stat. 440. N. Y. 3 U.S.Stat. 235; 13 id. 438. N. C. 1 U.S.Stat. 126. Ohio 2 U.S.Stat. 202; 10 id. 605. Oreg. 11 U.S.Stat. 437. Pa. 3 U.S.Stat. 463. Tenn. 2 U.S.Stat. 165; 5 id. 250; 5 id. 313. Tex. 9 U.S.Stat. 1; 11 id. 165. Vt. 1 U.S.Stat. 197. Va. 16 U.S.Stat. 474. W. Va. 3 U.S.Stat. 478, 479; 4 id. 48; 13 id. 124. Wis. 9 U.S.Stat. 57; 16 id. 172.

§ 777. Georgia, marshal's office in.—The marshal of the southern district of Georgia shall keep an office at Marietta, in the northern district, and his charges for mileage, in the execution of the duties of his office, within the northern district, shall be computed from Marietta.

9 U.S.Stat. 281.

§ 778. Iowa, marshal.—The marshal of the district of Iowa shall perform the duties of marshal for all of the divisions of said district, and shall keep an office at each of the places in the four divisions of said district where the circuit and district courts thereof are required to be held; and his charges for mileage, in the execution of the duties of his office, within said district, shall be computed from the city of Iowa.

9 U.S.Stat. 412; 11 id. 437, 438; 16 id. 174.

§ 779. Marshal's term.—Marshals shall be appointed for a term of four years.

1 U.S.Stat. 87.

§ 780. Deputy marshals.—Every marshal may appoint one or more deputies, who shall be removable from office by the judge of the district court, or by the circuit court for the district, at the pleasure of either.

1 U.S.Stat. 87.

§ 781. Marshal's salaries.—Marshals are entitled to receive salaries, as a compensation for extra services, as follows: The marshal of the district of California, at the rate of five hundred dollars a year; the marshal of the districts of North Carolina, at the rate of four hundred dollars a year; the marshals of all other districts, except

the southern and eastern districts of New York, the eastern district of Pennsylvania, the southern district of Illinois, the western district of Missouri, the northern and southern districts of Georgia, and the districts of Massachusetts, Maryland, and Nevada, at the rate of two hundred dollars a year.

Cal. 9 U.S.Stat. 522; 14 id. 300. N. C. and N. J. 2 U.S.Stat. 468, 469. Me. N. H. Vt. and Ky. 1 U.S.Stat. 625. Tenn. 2 U.S.Stat. 165; 2 id. 421; 5 id. 249; 5 id. 313. R. I. 4 U.S.Stat. 482. Conn. 4 U.S.Stat. 330. Nebr. 17 U.S.Stat. 337. N. Y. (N. D.) and Pa. (W. D.) 3 U.S.Stat. 598. Del. 4 U.S.Stat. 753. Va. 4 U.S.Stat. 331. W. Va. 3 U.S.Stat. 479; 4 id. 48; 13 id. 124. Ohio 2 U.S.Stat. 202; 10 id. 606. La. 2 U.S.Stat. 703; 14 id. 300. Miss. 3 U.S.Stat. 413; 5 id. 248. Ind. 3 U.S.Stat. 391. Ill. (N. D.) 3 U.S.Stat. 503; 10 id. 607. Ala. 4 U.S.Stat. 399. Mo. (E. D.) 3 U.S.Stat. 653; 11 id. 198. Mich. 5 U.S.Stat. 62; 12 id. 662. Ark. 5 U.S.Stat. 51; 9 id. 595. Fla. 5 U.S.Stat. 788; 9 id. 131. Tex. 9 U.S.Stat. 2; 11 id. 165. Wis. 9 U.S.Stat. 58. Iowa 5 U.S.Stat. 789. Minn. 11 U.S.Stat. 285. Oreg. 11 U.S.Stat. 437. Kans. 12 U.S.Stat. 128.

§ 782. Oath of marshals.—Every marshal and deputy marshal shall, before he enters upon the duties of his appointment, take, before the district judge of the district, an oath or affirmation in the following form: "I, A. B., do solemnly swear (or affirm) that I will faithfully execute all lawful precepts directed to the marshal of the district of —, under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal (or marshal's deputy, as the case may be) of the district of —, during my continuance in said office, and take only my lawful fees. So help me God." The words "so help me God" shall be omitted in all cases where an affirmation is admitted instead of an oath: *Provided*, That when any person who is appointed deputy marshal resides and is more than twenty miles from the place where the district judge resides and is, the said oath of office may be taken by him before any judge or justice of any State court within the same district, or before any justice of the peace having authority therein, or before any notary public duly appointed in such State, or before any commissioner of a circuit court for such district, and shall, when certified by such officer to the said district judge, be as effectual as if taken before such district judge.

1 U.S.Stat. 76, 87; 1 id. 625; 9 id. 458.

§ 783. Marshal's bond.—Every marshal, before he enters on the duties of his office, shall give bond before the district judge of the district, jointly and severally with two good and sufficient sureties, inhabitants and freeholders of such district, to be approved by said judge, in the sum of twenty thousand dollars, for the faithful performance of said duties by himself and his deputies. Said bond shall be filed and recorded in the office of the clerk of the district court or circuit court sitting within the district, and copies thereof, certified by the clerk, under the seal of the said court, shall be competent evidence in any court of justice.

1 U.S.Stat. 87; 2 id. 372. U. S. v. Kirkpatrick, 9 Wheat. 720; U. S. v. Vanzandt, 11 Wheat. 184; Dox v. Postmaster-General, 1 Pet. 325; Gwin v. Breedlove, 2 How. 29; Gwin v. Barton, 6 How. 7.

§ 784. Suits on marshal's bond—costs.—In case of a breach of the condition of a marshal's bond, any person thereby injured may institute in his own name and for his sole use a suit on said bond, and thereupon recover such damages as shall be legally assessed, with costs of suit, for which execution may issue for him in due form. If such party fails to recover in the suit, judgment shall be rendered and execution may issue against him for costs in favor of the defendant; and the United States shall in no case be liable for the same.

2 U.S.Stat. 373. U. S. v. Giles, 9 Oranch 212; U. S. v. Morris, 10 Wheat. 246; Williams v. U. S., 1 How. 290; Gwin v. Breedlove, 2 How. 29; Gwin v. Buchanan, 4 How. 1; Gwin v. Barton, 6 How. 7; Rogers v. The Marshal, 1 Wall. 644.

§ 785. Marshal's bond to remain after judgment.—The said bond shall remain, after any judgment rendered thereon, as a security for the benefit of any person injured by breach of the condition of the same, until the whole penalty has been recovered; and the proceedings shall always be as directed in the preceding section.

2 U.S.Stat. 374.

§ 786. Limitation of bonds.—No suit on a marshal's bond shall be maintained unless it is commenced within six years after the right of action accrues, saving, nevertheless, the rights of infants, married women, and insane persons, so that they sue within three years after their disabilities are removed.

2 U.S.Stat. 374. Montgomery v. Hernandez, 12 Wheat. 133.

§ 787. Duties of marshal.—It shall be the duty of the marshal of each district to attend the district and circuit courts when sitting therein, and to execute, throughout the district, all lawful precepts directed to him, and issued under the authority of the United States; and he shall have power to command all necessary assistance in the execution of his duty. [See § 4299.]

1 U.S.Stat. 87. U. S. v. Giles, 9 Cranch 212.

§ 788. Powers of marshals.—The marshals and their deputies shall have, in each State, the same powers, in executing the laws of the United States, as the sheriffs and their deputies in such State may have, by law, in executing the laws thereof.

1 U.S.Stat. 425; 12 id. 262.

§ 789. In case of death.—In case of the death of any marshal, his deputy or deputies shall continue in office, unless otherwise specially removed, and shall execute the same in the name of the deceased, until another marshal is appointed, as provided in this chapter, and duly qualified. The defaults or misfeasances in office of such deputies in the mean time shall be adjudged a breach of the condition of the bond given by the marshal who appointed them; and the executor or administrator of the deceased marshal shall have like remedy for the defaults and misfeasances in office of such deputies, during such interval, as he would be entitled to if the marshal had continued in life and in the exercise of his said office until his successor was appointed and duly qualified.

1 U.S.Stat. 87.

§ 790. May execute process in their hands when removed.—Every marshal or his deputy, when removed from office, or when the term for which the marshal is appointed expires, shall have power, notwithstanding, to execute all such precepts as may be in their hands respectively at the time of such removal or expiration of office; and the marshal shall be held responsible for the delivery to his successor of all prisoners who may be in his custody at the time of his removal, or when the term for which he is appointed expires; and for that purpose he may retain such prisoners in his custody until his successor is appointed and duly qualified.

1 U.S.Stat. 87; 2 id. 61. Doolittle's Lessee v. Bryan, 14 How. 563.

DEFTY F. PROC. 13.

§ 791. Returns to the Solicitor of the Treasury.—Every marshal shall, within thirty days before the commencement of each term of the circuit and district courts in his district, make returns to the Solicitor of the Treasury of the proceedings had upon all writs of execution, or other process, which have been placed in his hands for the collection of moneys adjudged and decreed to the United States in said courts, respectively.

3 U.S.Stat. 596; 4 id. 414.

§ 792. Returns, Post-Office Department.—Every marshal to whom any execution upon a judgment in any suit for moneys due on account of the Post-Office Department has been directed, shall make returns to the Sixth Auditor, at such times as he may direct, of the proceedings which have taken place upon the said process of execution.

5 U.S.Stat. 83.

§ 793. Vacancies, how filled.—In case of a vacancy in the office of district attorney or marshal within any circuit, the circuit justice of such circuit may fill the same, and the person appointed by him shall serve until an appointment is made by the President, and the appointee is duly qualified, and no longer. The appointment made by such justice shall be in writing, which shall be filed in the clerk's office of the circuit court, and a copy thereof shall be entered upon the journal of said court. Any marshal so appointed shall give bond, as if appointed by the President, and the bond shall be approved by said justice. It shall then be filed in the clerk's office of said court, and a copy shall be entered on the journal of the court. A certified copy of such entry shall be prima-facie proof of the execution of such bond, and of the contents thereof.

12 U.S.Stat. 768.

§ 794. Oath of clerks.—The clerk of the Supreme Court, and every clerk and deputy clerk of a circuit or district court, shall, before he enters upon the execution of his office, take an oath or affirmation in the following form: "I, A. B., being appointed a clerk of ———, do solemnly swear (or affirm) that I will truly and faithfully enter and record all the orders, decrees, judgments, and proceedings of the said court, and that I will faith-

fully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding. So help me God." The words "so help me God" shall be omitted in all cases where an affirmation is admitted instead of an oath.

1 U.S.Stat. 76; 16 id. 175.

§ 795. Clerk's bond.—The clerk of every court shall give bond, in a sum to be fixed and with sureties to be approved by the court which appoints him, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court of which he is clerk; and a new bond may be required whenever the court deems it proper that such bond should be given. A copy of every bond given by a clerk shall be entered on the journal of the court for which he is appointed, and the bond shall be deposited for safe keeping as the court may direct. A certified copy of such entry shall be prima-facie proof of the execution of such bond and of the contents thereof.

1 U.S.Stat. 76; 12 id. 768.

§ 796. Bond of deputy clerks.—Any circuit or district court may require any deputy clerk thereof to give bond to the United States for the faithful discharge of his duty as such deputy, in the same penalty, and with surety in the same manner, as is required by law of clerks; and such bond shall be recorded and preserved in like manner, but the taking of such bond shall not affect the legal responsibility of the clerk for the acts of such deputy.

16 U.S.Stat. 175.

§ 797. List of judgments.—Every clerk of a circuit or district court shall, within thirty days after the adjournment of each term thereof, forward to the Solicitor of the Treasury a list of all judgments and decrees, to which the United States are parties, which have been entered in said courts, respectively, during such term, showing the amount adjudged or decreed, in each case, for or against the United States, and the term to which execution thereon will be returnable.

3 U.S.Stat. 596; 4 id. 414.

§ 798. Account of payments.—At each regular session of any court of the United States, the clerk shall pre-

sent to the court an account of all moneys remaining therein, or subject to its order, stating in detail in what causes they are deposited, and in what causes payments have been made ; and said account and the vouchers thereof shall be filed in the court.

17 U.S.Stat. 2.

§ 799. Oaths.—The clerks of the district and circuit courts may, in the absence or in case of the disability of the judges, administer oaths to all persons identifying papers found on board of vessels or elsewhere, to be used on trials in admiralty causes.

1 U.S.Stat. 278.

CHAPTER XV.

JURIES.

- SECTION 800.** Jurors, qualifications and selection of, according to State laws.
- 801. Jurors in Pennsylvania.
 - 802. Jurors, how to be apportioned in the district.
 - 803. Writ of venire, how issued and served.
 - 804. Talesmen for petit juries.
 - 805. Special juries in the circuit courts.
 - 806. New York.
 - 807. Vermont, when petit jury to be summoned.
 - 808. Number of grand jurors; completing jury.
 - 809. Foreman of grand jury, appointment and powers of.
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 - 811. Discharge of grand juries.
 - 812. Jurors not to be summoned oftener than once in two years.
 - 813. Grand juries of district courts may act in cases cognizable in circuit court.
 - 814. Arkansas, western district, at Helena; jurors.
 - 815. Juries in Kentucky and Indiana.
 - 816. North Carolina, juries at special terms.
 - 817. Juries for western district of South Carolina.
 - 818. Vermont, charge to grand jury by the circuit court.
 - 819. Challenges.
 - 820. Additional causes of disqualification and challenge of grand and petit jurors.
 - 821. Additional oath for grand and petit jurors.
 - 822. Grand and petit jurors, in cases under Act 20 April, 1871, c. 22.

§ 800. Jurors, qualifications and selection of.— Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned; and they shall be designated by ballot, lot, or otherwise, according to the mode of forming such juries then practiced in such State court, so far as such mode may be practicable by the courts of the United States or the officers thereof. And for this purpose the said courts may, by rule or order, conform the

designation and impaneling of juries, in substance, to the laws and usages relating to jurors in the State courts from time to time in force in such State. This section shall not apply to juries to serve in the courts of the United States in Pennsylvania. [See § 1671.]

5 U.S.Stat. 394; 12 id. 430; 17 id. 15; 9 id. 403; 16 id. 363; 16 id. 589. *Silsby v. Foote*, 14 How. 218; U. S. v. *Shackelford*, 18 How. 588; U. S. v. *Douglass*, 2 Blatch. 207; U. S. v. *Reed*, 2 Blatch. 435; U. S. v. *Woodruff*, 4 McLean 105.

§ 801. Jurors in Pennsylvania.—Jurors to serve in the courts of the United States in Pennsylvania shall be designated by lot or otherwise, in each district respectively, according to the mode of forming juries, to serve in the highest courts of law therein, which was practiced before the passage of the Act of July twenty, eighteen hundred and forty, chapter forty-seven, so far as the same shall render such designation practicable by the courts and marshals of the United States. But this provision is subject to the provisions relating to the qualifications and oath of jurors hereinafter contained.

9 U.S.Stat. 403; 5 id. 394; 2 id. 82; 16 id. 363; 16 id. 589; 12 id. 430; 17 id. 15.

§ 802. Jurors, how apportioned.—Jurors shall be returned from such parts of the district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly to burden the citizens of any part of the district with such services.

1 U.S.Stat. 88. U. S. v. *Stowell*, 2 Cur. C. C. 153; U. S. v. *Woodruff*, 4 McLean 105.

§ 803. Venire, how issued and served.—Writs of venire facias, when directed by the court, shall issue from the clerk's office, and shall be served and returned by the marshal in person, or by his deputy; or, in case the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by such fit person as may be specially appointed for that purpose by the court, who shall administer to him an oath that he will truly and impartially serve and return the writ.

1 U.S.Stat. 88.

§ 804. Talesmen for petit juries.—When, from challenges or otherwise, there is not a petit jury to de-

termine any civil or criminal cause, the marshal or his deputy shall, by order of the court in which such defect of jurors happens, return jurymen from the bystanders sufficient to complete the panel; and when the marshal or his deputy is disqualified as aforesaid, jurors may be so returned by such disinterested person as the court may appoint, and such person shall be sworn, as provided in the preceding section.

1 U.S.Stat. 88; 13 id. 500. U. S. v. Shackelford, 18 How. 588.

§ 805. **Special juries.**—When special juries are ordered in any circuit court, they shall be returned by the marshal in the same manner and form as is required in such cases by the laws of the several States.

2 U.S.Stat. 167.

§ 806. **New York.**—No jury shall be drawn for service exclusively in the circuit court for the northern district of New York at the adjourned terms thereof required by law to be held at Albany and Utica, but the jury drawn to serve in the district court held at the same times and places with said adjourned terms shall be used for the trial of issues of fact arising in civil causes in said circuit court, and the verdicts of said jury, and all proceedings upon the trial of said issues, shall be of the same effect as if the said jury had been drawn to serve in the said circuit court.

13 U.S.Stat. 385.

§ 807. **Vermont, petit jury in.**—The clerk of the district court for Vermont shall not cause a petit jury to be summoned or returned to any session in which there shall appear to be no issue proper for trial by jury, unless by special order of the judge.

2 U.S.Stat. 167.

§ 808. **Number of grand jurors.**—Every grand jury impaneled before any district or circuit court shall consist of not less than sixteen nor more than twenty-three persons. If of the persons summoned less than sixteen attend, they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. And whenever a

challenge to a grand juror is allowed, and there are not in attendance other jurors sufficient to complete the grand jury, the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose.

13 U.S.Stat. 500.

§ 809. Foreman of grand jury.—From the persons summoned and accepted as grand jurors, the court shall appoint the foreman, who shall have power to administer oaths and affirmations to witnesses appearing before the grand jury.

13 U.S.Stat. 500.

§ 810. Grand juries, when summoned.—No grand juries shall be summoned to attend any circuit or district court unless one of the judges of such circuit court, or the judge of such district, in his own discretion, or upon a notification by the district attorney that such jury will be needed, orders a venire to issue therefor. And either of the said courts may in term order a grand jury to be summoned, at such time and to serve such time as it may direct, whenever, in its judgment, it may be proper to do so. But nothing herein shall operate to extend beyond the time permitted by law the imprisonment before indictment found of a person accused of a crime or offense, or the time during which a person so accused may be held under recognition before indictment found.

1 U.S.Stat. 88; 4 id. 188; 9 id. 72; 11 id. 50.

§ 811. Discharge of grand juries.—The circuit and district courts, the district courts of the Territories, and the supreme court of the District of Columbia, may discharge their grand juries whenever they deem a continuance of the sessions of such juries unnecessary.

11 U.S.Stat. 50.

§ 812. Jurors not to be summoned oftener than once in two years.—No person shall be summoned as a juror in any circuit or district court more than once in two years, and it shall be sufficient cause of challenge to any juror called to be sworn in any cause that he has been summoned and attended said court as a juror at any term of said court held within two years prior to the time of such challenge.

16 U.S.Stat. 363.

§ 813. Grand juries of district courts may act in cases cognizable in circuit court.—The grand jury impaneled and sworn in any district court may take cognizance of all crimes and offenses within the jurisdiction of the circuit court for said district as well as of said district court.

9 U.S.Stat. 72.

§ 814. Jurors in Arkansas.—In the western district of Arkansas such number of jurors shall be summoned at every term of the district court thereof, to be held at Helena, as may have been ordered at a previous term, or by the district judge in vacation. And a grand jury may be summoned to attend any such term when ordered by the court, or by the judge in vacation. In case of a deficiency of jurors, talesmen may be summoned by order of the court.

16 U.S.Stat. 472.

§ 815. Juries in Kentucky and Indiana.—In the several districts of Kentucky and Indiana, such number of jurors shall be summoned by the marshal at every term of the circuit and district courts, respectively, as may have been ordered of record at the previous term; and in case there is not a sufficient number of jurors in attendance at any time, the court may order such number to be summoned as, in its judgment, may be necessary to transact the business of the court. And a grand jury may be summoned to attend every term of the circuit or district court by order of the court. The marshal may summon juries and talesmen in case of a deficiency, pursuant to an order of the court made during the term, and they shall serve for such time as the court may direct.

12 U.S.Stat. 386; 16 id. 175.

§ 816. Juries in North Carolina.—The circuit and district courts for either of the districts of North Carolina may order a grand or petit jury, or both, to attend any special term thereof, by an order to be entered of record thirty days before the day on which such special term is appointed to convene.

17 U.S.Stat. 215.

§ 817. Juries for western district of South Carolina.—The grand and petit jurors for the district court

sitting in the western district of South Carolina shall be drawn from the inhabitants of said district who are liable, according to the laws of said State, to do jury duty in the courts thereof; and all jurors shall be drawn during the sitting of the court for the next succeeding term.

11 U.S.Stat. 43; 3 id. 726; 4 id. 85.

§ 818. **Vermont, charge to grand jury.**—In the district of Vermont, it shall be the duty of the circuit court, at its regular sessions, to give in charge to the grand juries all crimes, offenses, and misdemeanors which are cognizable as well in the district court thereof as in the said circuit court.

2 U.S.Stat. 167.

§ 819. **Challenges.**—When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to five peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to three peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers. (See §§ 1031, 4303.)

U. S. v. Marchant, 12 Wheat. 480.

§ 820. **Disqualification and challenge.**—The following shall be causes of disqualification and challenge of grand and petit jurors in the courts of the United States, in addition to the causes existing by virtue of section eight hundred and twelve, namely: Without duress and coercion to have taken up arms or to have joined any insurrection or rebellion against the United States; to have adhered to any insurrection or rebellion, giving it aid and comfort; to have given, directly or indirectly, any assistance in money, arms, horses, clothes, or anything whatever, to or for the use or benefit of any person whom the giver of such assistance knew to have joined, or to be about to join, any insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms, the execution of the laws of

the United States, or whom he had good ground to believe to have joined, or to be about to join, any insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms, the execution of the laws of the United States; or to have counseled or advised any person to join any insurrection or rebellion, or to resist with force of arms the laws of the United States.

12 U.S.Stat. 430.

§ 821. Additional oath for grand and petit jurors.

—At every term of any court of the United States the district attorney, or other person acting on behalf of the United States in said court, may move, and the court, in their discretion, may require the clerk to tender to every person summoned to serve as a grand or petit juror, or venireman or talesman, in said court, the following oath or affirmation, namely: "You do solemnly swear (or affirm) that you will support the Constitution of the United States of America; that you have not, without duress and constraint, taken up arms or joined any insurrection or rebellion against the United States; that you have not adhered to any insurrection or rebellion, giving it aid and comfort; that you have not, directly or indirectly, given any assistance in money, or any other thing, to any person or persons whom you knew, or had good ground to believe to have joined, or to be about to join, said insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms, the execution of the laws of the United States; and that you have not counseled or advised any person to join any insurrection or rebellion against, or to resist with force of arms, the laws of the United States." Any person declining to take said oath shall be discharged by the court from serving on the grand or petit jury, or venire, to which he may have been summoned.

12 U.S.Stat. 430.

§ 822. Grand and petit jurors.—No person shall be a grand or petit juror in any court of the United States, upon any inquiry, hearing, or trial of any suit, proceeding, or prosecution based upon or arising under the provisions of Title "Civil Rights" and of Title "Crimes," for enforcing the provisions of the fourteenth amendment to the Constitution, who is, in the judgment of the court, in complicity with any combination or conspiracy in said

titles set forth; and every grand and petit juror shall, before entering upon any such inquiry, hearing, or trial, take and subscribe an oath, in open court, that he has never, directly or indirectly, counseled, advised, or voluntarily aided any such combination or conspiracy.

17 U.S.Stat. 15.

CHAPTER XVI.

FEES.

- SECTION 823.** Fees to be taxed.
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§ 823. Fees to be taxed.—The following and no other compensation shall be taxed and allowed to attor-

neys, solicitors, and proctors in the courts of the United States, to district attorneys, clerks of the circuit and district courts, marshals, commissioners, witnesses, jurors, and printers in the several States and Territories, except in cases otherwise expressly provided by law. But nothing herein shall be construed to prohibit attorneys, solicitors, and proctors from charging to and receiving from their clients, other than the Government, such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage in their respective States, or may be agreed upon between the parties.

10 U.S.Stat. 161 ; 10 id. 670,671.

§ 824. Attorneys, solicitors, and proctors.—On a trial before a jury, in civil or criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of twenty dollars: *Provided*, That in cases of admiralty and maritime jurisdiction, where the libellant recovers less than fifty dollars, the docket fee of his proctor shall be but ten dollars.

In cases at law, when judgment is rendered without a jury, ten dollars.

In cases at law, when the cause is discontinued, five dollars.

For scire facias, and other proceedings on recognizances, five dollars.

For each deposition taken and admitted in evidence in a cause, two dollars and fifty cents.

For services rendered in cases removed from a district to a circuit court by writ of error or appeal, five dollars.

For examination by a district attorney, before a judge or commissioner, of persons charged with crime, five dollars a day for the time necessarily employed.

For each day of his necessary attendance in a court of the United States, on the business of the United States, when the court is held at the place of his abode, five dollars; and for his attendance when the court is held elsewhere, five dollars for each day of the term.

For traveling from the place of his abode to the place of holding any court of the United States in his district, or to the place of any examination before a judge or com-

missioner, of a person charged with crime, ten cents a mile for going and ten cents a mile for returning.

When an indictment for crime is tried before a jury and a conviction is had, the district attorney may be allowed, in addition to the attorney's fees herein provided, a counsel fee, in proportion to the importance and difficulty of the cause, not exceeding thirty dollars.

10 U.S.Stat. 161, 162. Ex parte Robbins, 2 Gallis. 320; The Anna, Blatch, Pr. Cas. 337; U. S. v. Ingersoll, Crabbe 135.

§ 825. Fees in revenue cases and in suits on official bonds.—There shall be taxed and paid to every district attorney two per centum upon all monies collected or realized in any suit or proceeding arising under the revenue laws, and conducted by him, in which the United States is a party, which shall be in lieu of all costs and fees in such proceeding.

12 U.S.Stat. 741.

§ 826. Fees on bonds, when not allowed.—No fee shall accrue to any district attorney on any bond left with him for collection, or in a suit commenced on any bond for the renewal of which provision is made by law, unless the party neglects to apply for such renewal for more than twenty days after the maturity of the bond.

5 U.S.Stat. 204.

§ 827. Fees of district attorney for defense of revenue officers.—When a district attorney appears by direction of the Secretary or Solicitor of the Treasury, on behalf of any officer of the revenue in any suit against such officer, for any act done by him, or for the recovery of any money received by him and paid into the Treasury in the performance of his official duty, he shall receive such compensation as may be certified to be proper by the court in which the suit is brought, and approved by the Secretary of the Treasury. [See § 4646.]

12 U.S.Stat. 741.

§ 828. Clerks' fees.—For issuing and entering every process, commission, summons, capias, execution, warrant, attachment, or other writ, except a writ of venire, or a summons or subpoena for a witness, one dollar.

For issuing a writ of summons or subpoena, twenty-five cents.

For filing and entering every declaration, plea, or other paper, ten cents.

For administering an oath or affirmation, except to a juror, ten cents.

For taking an acknowledgment, twenty-five cents.

For taking and certifying depositions to file, twenty cents for each folio of one hundred words.

For a copy of such deposition furnished to a party on request, ten cents a folio.

For entering any return, rule, order, continuance, judgment, decree, or recognizance, or drawing any bond, or making any record, certificate, return, or report, for each folio, fifteen cents.

For a copy of any entry or record, or of any paper on file, for each folio, ten cents.

For making dockets and indexes, issuing venire, taxing costs, and all other services, on the trial or argument of a cause where issue is joined and testimony given, three dollars.

For making dockets and indexes, taxing costs, and all other services, in a cause where issue is joined, but no testimony is given, two dollars.

For making dockets and indexes, taxing costs, and other services, in a cause which is dismissed or discontinued, or where judgment or decree is made or rendered without issue, one dollar.

For making dockets and taxing costs, in cases removed by writ of error or appeal, one dollar.

For affixing the seal of the court to any instrument, when required, twenty cents.

For every search for any particular mortgage, judgment, or other lien, fifteen cents.

For searching the records of the court for judgments, decrees, or other instruments constituting a general lien on real estate, and certifying the result of such search, fifteen cents for each person against whom such search is required to be made.

For receiving, keeping, and paying out money, in pursuance of any statute or order of court, one per centum on the amount so received, kept, and paid.

For traveling from the office of the clerk, where he is required to reside, to the place of holding any court required by law to be held, five cents a mile for going and five cents for returning, and five dollars a day for his attendance on the court while actually in session.

All books in the offices of the clerks of the circuit and district courts, containing the docket or minute of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor.

10 U.S.Stat. 163, 167. *Bottomley v. U. S.*, 1 Story 135; *Pomroy v. Harter*, 1 McLean 448; *Anon. Hempst.* 450; *Erwin v. Cummins, Hempst.* 703; *Ex parte Paris*, 3 Wood. & M. 227. 9 U.S.Stat. 292.

§ 829. Marshals' fees.—For service of any warrant, attachment, summons, capias, or other writ, except execution, venire, or a summons or subpoena for a witness, two dollars for each person on whom service is made.

For the keeping of personal property attached on mesne process, such compensation as the court, on petition setting forth the facts under oath, may allow.

For serving venires and summoning every twelve men as grand or petit jurors, four dollars, or thirty-three and one-third cents each. In States where, by the laws thereof, jurors are drawn by lot, by constables, or other officers of corporate places, the marshal shall receive, for each jury, two dollars for the use of the officers employed in drawing and summoning the jurors and returning each venire, and two dollars for his own services in distributing the venires. But the fees for distributing and serving venires, drawing and summoning jurors by township officers, including the mileage chargeable by the marshal for each service, shall not at any court exceed fifty dollars.

For holding a court of inquiry or other proceedings before a jury, including the summoning of a jury, five dollars.

For serving a writ of subpoena on a witness, fifty cents; and no further compensation shall be allowed for any copy, summons, or notice for a witness.

For serving a writ of possession, partition, execution, or any final process, the same mileage as is allowed for the service of any other writ, and for making the service, seizing or levying on property, advertising and disposing of the same by sale, set-off, or otherwise according to law, receiving and paying over the money, the same fees and poundage as are or shall be allowed for similar services to the sheriffs of the States, respectively, in which the service is rendered.

For each bail-bond, fifty cents.

For summoning appraisers, fifty cents each.

For executing a deed prepared by a party or his attorney, one dollar.

For drawing and executing a deed, five dollars.

For copies of writs or papers furnished at the request of any party, ten cents a folio.

For every proclamation in admiralty, thirty cents.

For serving an attachment in rem or a libel in admiralty, two dollars.

For the necessary expenses of keeping boats, vessels, or other property attached or libeled in admiralty, not exceeding two dollars and fifty cents a day.

When the debt or claim in admiralty is settled by the parties without a sale of the property, the marshal shall be entitled to a commission of one per centum on the first five hundred dollars of the claim or decree, and one-half of one per centum on the excess of any sum thereof over five hundred dollars: *Provided*, That, when the value of the property is less than the claim, such commission shall be allowed only on the appraised value thereof.

For sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and for receiving and paying over the money, two and one-half per centum on any sum under five hundred dollars, and one and one-quarter per centum on the excess of any sum over five hundred dollars.

For disbursing money to jurors and witnesses, and for other expenses, two per centum.

For expenses while employed in endeavoring to arrest, under process, any person charged with or convicted of a crime, the sum actually expended, not to exceed two dollars a day, in addition to his compensation for service and travel.

For every commitment or discharge of a prisoner, fifty cents.

For transporting criminals, ten cents a mile for himself and for each prisoner and necessary guard; except in the case provided for in the next paragraph.

For transporting criminals convicted of a crime in any district or Territory where there is no penitentiary available for the confinement of convicts of the United States, to a prison in another district or Territory designated by the Attorney-General, the reasonable actual expense of

transportation of the criminals, the marshal, and the guards, and the necessary subsistence and hire.

For attending the circuit and district courts, when both are in session, or either of them when only one is in session, and for bringing in and committing prisoners and witnesses during the term, five dollars a day.

For attending examinations before a commissioner, and bringing in, guarding, and returning prisoners charged with crime, and witnesses, two dollars a day; and for each deputy not exceeding two, necessarily attending, two dollars a day.

For traveling from his residence to the place of holding court, to attend a term thereof, ten cents a mile for going only.

For travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpoena in civil or criminal cases, six cents a mile, to be computed from the place where the process is returned to the place of service, or, when more than one person is served therewith, to the place of service which is most remote, adding thereto the extra travel which is necessary to serve it on the others. But when more than two writs of any kind required to be served in behalf of the same party on the same person might be served at the same time, the marshal shall be entitled to compensation for travel on only two of such writs; and to save unnecessary expense, it shall be the duty of the clerk to insert the names of as many witnesses in a cause in such subpoena as convenience in serving the same will permit.

In all cases where mileage is allowed to the marshal he may elect to receive the same or his actual traveling expenses, to be proved on his oath, to the satisfaction of the court. [See § 1660.]

10 U.S.Stat. 184; 13 id. 74.

§ 830. Fees of marshals.—There shall be paid to the marshal his fees for services rendered for the United States, for summoning jurors and witnesses in behalf of the United States, and in behalf of any prisoner to be tried for a capital offense, for the maintenance of prisoners of the United States confined in jail for any criminal offense; also, for his reasonable actual expense for the transportation of criminals, and of the marshal and guards, to prisons designated by the Attorney-General, and for hire and subsistence in

that behalf, as hereinbefore provided; also, his fees for the commitment or discharge of prisoners; his expenses necessarily incurred for fuel, lights, and other contingencies that may accrue in holding the courts within his district, and providing the books necessary to record the proceedings thereof: *Provided*, That he shall not incur, or be allowed, an expense of more than twenty dollars in any one year for furniture, or fifty dollars for rent of a building and making improvements thereon without first submitting a statement and estimates to the Attorney-General and getting his instructions in the premises.

10 U.S.Stat. 165; 13 id. 74, 75; 16 id. 164. *The Antelope*, 12 Wheat. 546.

§ 831. Attendance on rule-days, and when circuit and district courts sit at same time.—No per diem or other allowance shall be made to any district attorney, clerk of a circuit court, clerk of a district court, marshal or deputy marshal, for attendance at rule-days of a circuit or district court; and when the circuit and district courts sit at the same time no greater per diem or other allowance shall be made to any such officer than for an attendance on one court.

10 U.S.Stat. 167.

§ 832. Marshal of the Supreme Court of the United States.—The marshal of the Supreme Court of the United States shall be entitled to receive for the service of any warrant, attachment, summons, capias, or other writ, except execution, venire, or a summons, or subpoena for a witness, one dollar for each person on whom such service may be made. His fees for all other services shall be the same as are herein allowed to other marshals; but he shall pay into the Treasury of the United States all fees received by him, and render a true account thereof at the close of each term to the Attorney-General.

13 U.S.Stat. 195, 196; 14 id. 433; 16 id. 164.

§ 833. Semi-annual return of fees.—Every district attorney, clerk of a district court, clerk of a circuit court, and marshal, shall, on the first days of January and July, in each year, or within thirty days thereafter, make to the Attorney-General, in such form as he may prescribe, a written return for the half year ending on said days respectively, of all the fees and emoluments of his office, of every

name and character, and of all the necessary expenses of his office, including necessary clerk-hire, together with the vouchers for the payment of the same for such last half year. He shall state separately in such returns the fees and emoluments received or payable under the bankrupt act; and every marshal shall state separately therein the fees and emoluments received or payable for services rendered by himself personally, those received or payable for services rendered by each of his deputies, naming him, and the proportion of such fees and emoluments which, by the terms of his service, each deputy is to receive. Said returns shall be verified by the oath of the officer making them. [See §§ 3085, 4644, 4647.]

10 U.S.Stat. 165; 16 id. 164.

§ 834. What to be included in the semi-annual returns.—The preceding section shall not apply to the fees and compensation allowed to district attorneys by sections eight hundred and twenty-five and eight hundred and twenty-seven. All other fees, charges, and emoluments to which a district attorney or a marshal may be entitled, by reason of the discharge of the duties of his office, as now or hereafter prescribed by law, or in any case in which the United States will be bound by the judgment rendered therein, whether prescribed by statute or allowed by a court, or any judge thereof, shall be included in the semi-annual return required of said officers by the preceding section.

12 U.S.Stat. 741; 13 id. 196.

§ 835. Compensation of district attorney.—No district attorney shall be allowed by the Attorney-General to retain of the fees and emoluments of his office which he is required to include in his semi-annual return, for his personal compensation, over and above the necessary expenses of his office, including necessary clerk-hire, to be audited and allowed by the proper accounting officers of the Treasury Department, a sum exceeding six thousand dollars a year, or exceeding that rate for any time less than a year.

10 U.S.Stat. 166; 12 id. 741; 13 id. 196; 13 id. 312; 16 id. 164.

§ 836. District attorney of southern district of New York.—There shall be paid to the district attorney for the southern district of New York, in addition to his

salary, at the rate of six thousand dollars a year, such sum as shall be necessary, together with the costs and fees allowed him by law, to pay such amount as may be fixed by the Attorney-General for the proper expenses of his office. But nothing in this or the preceding section shall forbid the allowance of additional compensation for services in prize causes, as provided in Title "Prize."

12 U.S.Stat. 317; 16 id. 164; 13 id. 312.

§ 837. District attorney and marshal in Oregon and Nevada.—The district attorneys and marshals for the districts of Oregon and Nevada shall be entitled to receive, for the like services, double the fees hereinbefore provided; but neither of them shall be allowed to retain of such fees any sum exceeding the aggregate compensation of such officer as hereinbefore provided.

13 U.S.Stat. 440.

§ 838. Prosecution of frauds on the revenue.—It shall be duty of every district attorney to whom any collector of customs, or of internal revenue, shall report according to law, any case in which any fine, penalty, or forfeiture has been incurred in the district of such attorney for the violation of any law of the United States relating to the revenue, to cause the proper proceedings to be commenced and prosecuted without delay, for the fines, penalties, and forfeitures in such case provided, unless, upon inquiry and examination, he shall decide that such proceedings cannot probably be sustained, or that the ends of public justice do not require that such proceedings should be instituted; in which case he shall report the facts in customs cases to the Secretary of the Treasury, and in internal revenue cases to the Commissioner of Internal Revenue for their direction. And for the expenses incurred and services rendered in all such cases, the district attorney shall receive and be paid from the Treasury such sum as the Secretary of the Treasury shall deem just and reasonable, upon the certificate of the judge before whom such cases are tried or disposed of: *Provided*, That the annual compensation of such district attorney shall not exceed the maximum amount prescribed by law, by reason of such allowance and payment.

17 U.S.Stat. 581.

§ 839. Compensation retained by a clerk.—No clerk of a district court, or clerk of a circuit court, shall

be allowed by the Attorney-General, except as provided in the next section, and in section eight hundred and forty-two, to retain of the fees and emoluments of his office, or, in case both of the said clerkships are held by the same person, of the fees and emoluments of the said offices, respectively, for his personal compensation, over and above his necessary office expenses, including necessary clerk-hire, to be audited and allowed by the proper accounting officers of the Treasury, a sum exceeding three thousand five hundred dollars a year for any such district clerk or for any such circuit clerk, or exceeding that rate for any time less than a year.

10 U.S.Stat. 166; 16 id. 174. U. S. v. Bassett, 2 Story 389.

§ 840. Clerks in California, Oregon, and Nevada.

—The clerks of the several circuit and district courts in California, Oregon, and Nevada shall be entitled to charge and receive double the fees hereinbefore allowed to clerks, and shall be allowed, respectively, by the Attorney-General, to retain of the fees so received by them, for their personal compensation, over and above the necessary expenses of their offices, including the salaries of deputy clerks, and necessary clerk-hire, to be audited by the proper accounting officers of the Treasury Department, any sum not exceeding seven thousand dollars a year, nor exceeding that rate for any time less than a year: *Provided*, That whenever, in either of the said districts, the same person holds the office of clerk of both the circuit and district courts, he shall be allowed by the Attorney-General to retain for his personal compensation, as aforesaid, only such sum as is herein allowed to be retained by a person holding the office of clerk of only one of the said courts.

10 U.S.Stat. 163; 13 id. 5; 13 id. 440; 16 id. 164; 17 id. 330.

§ 841. Compensation of marshal.—No marshal shall be allowed by the Attorney-General, except as provided in the next section, to retain of the fees and emoluments which he is required to include in his semi-annual return, as aforesaid, for his personal compensation, over and above the necessary expenses of his office, including necessary clerk-hire, to be audited and allowed by the proper accounting officers of the Treasury Department, and a proper allowance to his deputies, any sum exceeding six thousand dollars a year, or exceeding that rate for any time less than a year. The allowance to any deputy shall in no

case exceed three-fourths of the fees and emoluments received or payable for the services rendered by him, and may be reduced below that rate by the Attorney-General, whenever the returns show such rate to be unreasonable.

10 U.S.Stat. 166; 12 id. 219; 13 id. 196; 16 id. 164.

§ 842. Additional compensation in prize causes.

—Clerks and marshals may be allowed to retain, for all official services in prize causes, an additional compensation not exceeding in amount one-half of the maximum compensation allowed to them, respectively, by the three preceding sections.

13 U.S.Stat. 312.

§ 843. Allowances for each year made from the fees thereof.—The allowances for personal compensation of district attorneys, clerks, and marshals, for each calendar year, shall be made from the fees and emoluments of that year, and not otherwise.

10 U.S.Stat. 166.

§ 844. Payment of surplus fees into the Treasury.

—Every district attorney, clerk, and marshal shall, at the time of making his half-yearly return to the Attorney-General, pay into the Treasury, or deposit to the credit of the Treasurer, as he may be directed by the Attorney-General, any surplus of the fees and emoluments of his office, which said return shows to exist over and above the compensation and allowances authorized by law to be retained by him.

10 U.S.Stat. 166; 16 id. 164.

§ 845. Auditing of accounts of district attorney.—

In every case where the return of a district attorney, clerk, or marshal shows that a surplus may exist, the Attorney-General shall cause such returns to be carefully examined, and the accounts of disbursements to be regularly audited by the proper officer of his Department, and an account to be opened with such officer in proper books to be provided for that purpose.

10 U.S.Stat. 165, 166; 16 id. 164.

§ 846. Accounts to be certified to by district judge.—The accounts of district attorneys, clerks, marshals, and commissioners of circuit courts shall be examined and certified by the district judge of the district for which they are appointed, before they are presented to

the accounting officers of the Treasury Department for settlement. They shall then be subject to revision upon their merits by said accounting officers, as in case of other public accounts; *Provided*, That no accounts of fees or costs paid to any witness or juror, upon the order of any judge or commissioner, shall be so re-examined as to charge any marshal for an erroneous taxation of such fees or costs.

* That where the ministerial officers of the United States have or shall incur extraordinary expense in executing the laws thereof, the payment of which is not specifically provided for, the President of the United States is authorized to allow the payment thereof under the special taxation of the district or circuit court of the district in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the expenses of the judiciary.

§ 847. Commissioners' fees.—For administering an oath, ten cents.

For taking an acknowledgment, twenty-five cents.

For hearing and deciding on criminal charges, five dollars a day for the time necessarily employed.

For attending to a reference in a litigated matter, in a civil cause at law, in equity, or in admiralty, in pursuance of an order of the court, three dollars a day.

For taking and certifying depositions to file, twenty cents for each folio.

For each copy of the same furnished to a party on request, ten cents for each folio.

For issuing any warrant or writ, and for any other service, the same compensation as is allowed to clerks for like services.

For issuing any warrant under the tenth article of the treaty of August nine, one thousand eight hundred and forty-two, between the United States and the Queen of the United Kingdom of Great Britain and Ireland, against any person charged with any crime or offense set forth in said article, two dollars.

For issuing any warrant under the provision of the convention for the surrender of criminals, between the United States and the King of the French, concluded at Washing-

* Amended by Act of February 18th, 1875.

ton, November nine, one thousand eight hundred and forty-three, two dollars.

For hearing and deciding upon the case of any person charged with any crime or offense, and arrested under the provisions of said treaty, or of said convention, five dollars a day for the time necessarily employed.

For the examination and certificate in cases of applications for discharge of poor convicts imprisoned for non-payment of a fine or fine and costs, five dollars a day for the time necessarily employed. [See § 1042.]

17 U.S.Stat. 199.

§ 848. Witnesses' fees.—For each day's attendance in court, or before any officer, pursuant to law, one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning. When a witness is subpoenaed in more than one cause between the same parties, at the same court, only one travel fee and one per diem compensation shall be allowed for attendance. Both shall be taxed in the case first disposed of, after which the per diem attendance fee alone shall be taxed in the other cases in the order in which they are disposed of.

When a witness is detained in prison for want of security for his appearance, he shall be entitled, in addition to his subsistence, to a compensation of one dollar a day. [See §§ 879, 881.]

10 U.S.Stat. 167.

§ 849. No officer of court to have witness fees.—No officer of the United States courts, in any State or Territory, or in the District of Columbia, shall be entitled to witness fees for attending before any court or commissioner where he is officiating.

11 U.S.Stat. 50; 10 id. 16 (22).

§ 850. Expenses of clerks as witnesses.—When any clerk or other officer of the United States is sent away from his place of business as a witness for the Government, his necessary expenses, stated in items and sworn to, in going, returning, and attendance on the court, shall be audited and paid; but no mileage, or other compensation in addition to his salary, shall in any case be allowed.

10 U.S.Stat. 167, 168.

§ 851. Seamen sent home as witnesses.—There shall be paid to each seaman or other person who is sent to the United States from any foreign port, station, sea, or ocean, by any United States minister, chargé d'affaires, consul, captain, or commander, to give testimony in any criminal case depending in any court of the United States, such compensation, exclusive of subsistence and transportation, as such court may adjudge to be proper, not exceeding one dollar for each day necessarily employed in such voyage, and in arriving at the place of examination or trial. In fixing such compensation, the court shall take into consideration the condition of said seaman or witness, and whether his voyage has been broken up, to his injury, by his being sent to the United States.

When such seaman or person is transported in an armed vessel of the United States, no charge for subsistence or transportation shall be allowed. When he is transported in any other vessel, the compensation for his transportation and subsistence, not exceeding in any case fifty cents a day, may be fixed by the court, and shall be paid to the captain of said vessel accordingly.

10 U.S.Stat. 168.

§ 852. Fees of grand and petit jurors.—For actual attendance at any court or courts, and for the time necessarily occupied in going to and returning from the same, three dollars a day during such attendance.

For the distance necessarily traveled from their residence in going to and returning from said court by the shortest practicable route, five cents a mile.

16 U.S.Stat. 363. *Edwards v. Bond*, 5 McLean 300.

§ 853. Printers' fees.—For publishing any notice, or order, required by law, or the lawful order of any court, department, bureau, or other person, in any newspaper, except as mentioned in sections thirty-eight hundred and twenty-three, thirty-eight hundred and twenty-four, and thirty-eight hundred and twenty-five, Title, "Public Printing, Advertisements, and Public Documents," forty cents per folio for the first insertion, and twenty cents per folio for each subsequent insertion. The compensation herein provided shall include the furnishing of lawful evidence, under oath, of publication, to be made and fur-

nished by the printer or publisher making such publication.

10 U.S.Stat. 168.

§ 854. Meaning of folio.—The term folio, in this chapter, shall mean one hundred words, counting each figure as a word. When there are over fifty and under one hundred words, they shall be counted as one folio; but a less number than fifty words shall not be counted, except when the whole statute, notice, or order contains less than fifty words.

10 U.S.Stat. 168.

§ 855. Payment of jurors and witnesses.—In cases where the United States are parties, the marshal shall, on the order of the court, to be entered on its minutes, pay to the jurors and witnesses all fees to which they appear by such order to be entitled, which sum shall be allowed him at the Treasury in his accounts.

10 U.S.Stat. 168.

§ 856. Fees of district attorneys, etc.—The fees of district attorneys, clerks, marshals, and commissioners, in cases where the United States are liable to pay the same, shall be paid on settling their accounts at the Treasury.

10 U.S.Stat. 168.

§ 857. Fees, how recovered.—The fees and compensations of the officers and persons hereinbefore mentioned, except those which are directed to be paid out of the Treasury, shall be recovered in like manner as the fees of the officers of the States respectively for like services are recovered.

1 U.S.Stat. 278.

CHAPTER XVII.

EVIDENCE.

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§ 858. No witness excluded on account of color or interest.—In the courts of the United States no witness shall be excluded in any action on account of color, or in any civil action because he is a party to or interested in the issue tried: *Provided*, That in actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other, as to any transaction with, or statement by, the testator, intestate, or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court. In all other respects, the laws of the State in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law, and in equity and admiralty. [See § 1977.]

13 U.S.Stat. 351; 13 id. 533; 12 id. 588. U. S. v. Murphy, 16 Pet. 203; Smyth v. Strader, 4 How. 420; U. S. v. Reid, 12 How. 361; Wright v. Bales, 2 Black 535; Green v. U. S., 9 Wall. 655; Lucas v. Brooks, 18 Wall. 436; Texas v. Chiles, 21 Wall. 488.

§ 859. Testimony before Congress not admissible in criminal prosecutions.—No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege. [See § 103.]

12 U.S.Stat. 333; 11 id. 156.

§ 860. Pleadings, disclosures, etc., not to be used in criminal proceedings.—No pleading of a party, nor any discovery or evidence obtained from a party or witness by means of a judicial proceeding in this or any foreign country, shall be given in evidence, or in any manner used against him or his property or estate, in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture: *Provided*, That this section shall not exempt any party or witness from prosecution and punishment for perjury committed in discovering or testifying as aforesaid.

15 U.S.Stat. 37; U.S. v. Hughes, 12 Blatchf. 553.

§ 861. Mode of proof in common-law actions.—The mode of proof in the trial of actions at common law shall be by oral testimony and examination of witnesses in open court, except as hereinafter provided.

1 U.S.Stat. 88; 2 id. 682; 4 id. 197, 199.

§ 862. Mode of proof in equity and admiralty causes.—The mode of proof in causes of equity and of admiralty and maritime jurisdiction shall be according to rules now or hereafter prescribed by the Supreme Court, except as herein specially provided.

5 U.S.Stat. 518.

§ 863. Depositions de bene esse.—The testimony of any witness may be taken in any civil cause depending in a district or circuit court by deposition de bene esse, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is ancient and infirm.

The deposition may be taken before any judge of any court of the United States, or any commissioner of a circuit court, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the cause. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition; and in all cases in rem, the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of an attorney of record or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold courts in such circuit or district shall think reasonable and direct. Any person may be compelled to appear and depose as provided by this section, in the same manner as witnesses may be compelled to appear and testify in court.

1 U.S.Stat. 88; 3 id. 350; 10 id. 163; 10 id. 315; 17 id. 89.

When authorized, *Allen v. Blunt*, 2 Woodb. & M. 122; *Buckingham v. Burgess*, 3 McLean 363; *Curtis v. Central R. R.*, 6 McLean 401; *Pettibone v. Derringer*, 4 Wash. O. C. 215; *Frouty v. Draper*, 2 Story 199; *Russell v. Ashley*, Hempst. 546; *Tooker v. Thompson*, 3 McLean 92. Conditions enumerated, *Harris v. Wall*, 7 How. 693. To be taken by commission, *The Argo*, 2 Wheat. 287; *The London Packet*, id. 371; *Patapsco Ins. Co. v. Southgate*, 5 Pet. 616; *Stein v. Bowman*, 13 Pet. 209; *Hoyt v. Hammekin*, 14 How. 350. Who may take, *Fowler v. Merrill*, 11 How. 375; *Price v. Morris*, 5 McLean 4; *Ruggles v. Bucknor*, 1 Paine C. C. 358; *Voce v. Lawrence*, 4 McLean 203; *Whitney v. Hunt*, 5 Cranch C. C. 120. Strict conformity to statute required, *Shutte v. Thompson*, 15 Wall. 151; *Bell v. Morrison*, 1 Pet. 355; *Evans v. Hettick*, 3 Wash. O. C. 409; *Luther v. The Merritt Hunt*, Newb. 4; *Thorpe v. Simmons*, 2 Cranch C. C. 195; *Edmondson v. Barrell*, 2 id. 228. Notice to adverse party, *The Argo*, 2 Gall. 314; *Barrell v. Limington*, 4 Cranch C. C. 70; *Bell v. Newmon*, 4 McLean 539; *Buddicum v. Kirke*, 3 Cranch 293; *Bussard v. Catalino*, 2 Cranch C. C. 421; *Cahoon v. Ring*, 1 Cliff. 592; *Carrington v. Stimson*, 1 Curt. 437; *Debotts v. McCulloch*, 1 Cranch C. C. 286; *Dick v. Runnels*, 5 How. 7; *Dinsmore v. Maroney*, 4 Blatch. 416; *Goodhue v. Bartlett*, 5 McLean 186; *Merrill v. Dawson*, Hempst.

563; *Miller v. Young*, 2 Cranch C. C. 53; *Nelson v. Woodruff*, 1 Black 156; *The Samuel*, 1 Wheat. 16; *Walsh v. Rogers*, 13 How. 283; *Wilkinson v. Yale*, 6 McLean 18. Cross-examination, right of, *Dade v. Young*, 1 Cranch C. C. 123; *The Ottawa*, 3 Wall. 271; *Tappan v. Beardsley*, 10 Wall. 427. Compulsion of witness, *Barnet v. Day*, 3 Wash. C. C. 243; *Ex parte Humphrey*, 2 Blatch. 228. In re *Judson*, 3 Blatch. 143; *Ex parte Beck*, id. 113. Certificate, sufficiency of, *Banks v. Miller*, 1 Cranch C. C. 543; *Brown v. Piatt*, 2 id. 253; *Centre v. Keene*, id. 198; *Garrett v. Woodward*, id. 190; *Moore v. Nelson*, 8 McLean 384; *Paul v. Lowry*, 2 Cranch C. C. 628; *Peyton v. Veitch*, id. 123; *Rainer v. Haynes*, Hempst. 689; *Vasse v. Smith*, 2 Cranch C. C. 31; *Woodward v. Hall*, 2 Cranch C. C. 235. Caption, sufficiency of, *Wheaton v. Love*, 1 Cranch C. C. 451; *Van Ness v. Heinecke*, 2 id. 259. Objections, when to be taken, *Mechanics Bank v. Seaton*, 1 Pct. 307; *The Thomas and Henry v. U. S.*, 1 Brock. 367; *U. S. v. Case of Hair Pencils*, 1 Paine C. C. 400.

§ 864. Mode of taking depositions *de bene esse*.

—Every person deposing as provided in the preceding section, shall be cautioned and sworn to testify the whole truth, and carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or by himself in the magistrate's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent.

1 U.S.Stat. 83; 17 id. 89. *Bell v. Morrison*, 1 Pet. 351; *Patapsco Ins. Co. v. Southgate*, 5 Pet. 604; *Oook v. Burnley*, 11 Wall. 659; *Shutte v. Thompson*, 13 Wall. 151; *Moore v. Nelson*, 8 McLean 393; *Jones v. Knowles*, 1 Cr. C. C. 523; *Marstin v. McRea*, Hempst. 688; *Rainer v. Haynes*, Hempst. 689; *Thorpe v. Simmons*, 2 Cr. C. C. 195; *Centre v. Keene*, 2 Cr. C. C. 198; *Edmondson v. Barrell*, id. 228; *Bussard v. Catalino*, 2 Cr. C. C. 421.

§ 865. Transmission to the court of depositions *de bene esse*.—

Every deposition taken under the two preceding sections shall be retained by the magistrate taking it, until he delivers it with his own hand into the court for which it is taken; or it shall, together with a certificate of the reasons as aforesaid of taking it and of the notice, if any, given to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in court. But unless it appears to the satisfaction of the court that the witness is then dead, or gone out of the United States, or to a greater distance than one hundred miles from the place where the court is sitting, or that, by reason of age, sickness, bodily infirmity, or imprisonment, he is unable to travel and appear at court, such deposition shall not be used in the cause.

1 U.S.Stat. 88. *Beale v. Thompson*, 8 Cranch 70; *Evans v. Hettich*, 7 Wheat. 453; *Harris v. Wall*, 7 How. 693; *Shankwiker v. Reading*, 4 McLean 240; *Thorp v. Orr*, 2 Cr. C. O. 335.

§ 866. *Depositions under a dedimus potestatem and in perpetuam, etc.*—In any case where it is necessary, in order to prevent a failure or delay of justice, any of the courts of the United States may grant a dedimus potestatem to take depositions according to common usage; and any circuit court, upon application to it as a court of equity, may, according to the usages of chancery, direct depositions to be taken in perpetuam rei memoriam, if they relate to any matters that may be cognizable in any court of the United States. And the provisions of sections eight hundred and sixty-three, eight hundred and sixty-four, and eight hundred and sixty-five, shall not apply to any deposition to be taken under the authority of this section.

1 U.S.Stat. 88; 17 id. 89. *Guppy v. Brown*, 4 Dall. 410; *Buddicum v. Kirk*, 3 Cranch 293; *Sergeant v. Biddle*, 4 Wheat. 508; *Evans v. Hettich*, 7 id. 453; *Gilpins v. Consequa*, Pet. C. O. 85; *Nelson v. U. S.*, id. 235; *Willings v. Consequa*, id. 301; *Winthrop v. Union Ins. Co.*, 2 Wash. C. O. 7; *Richardson v. Golden*, 3 id. 109; *Bell v. Davidson*, 3 id. 332; *Lonsdale v. Brown*, 3 id. 404; *Dodge v. Israel*, 4 id. 323; *The Schooner Ruby*, 5 Mas. 451; *Cunningham v. Otis*, 1 Gall. 166; *Leroy v. Delaware Ins. Co.*, 2 Wash. C. O. 223; *U. S. v. Price*, 2 id. 356; *Boudereau v. Montgomery*, 4 id. 186; *Peters v. Prevost*, 1 Paine 64; *Jones v. Or. C. R. R. Co.* 8 Ch. L. N. 115.

§ 867. *Depositions in perpetuam, etc., admissible at discretion of the court.*—Any court of the United States may, in its discretion, admit in evidence in any cause before it any deposition taken in perpetuam rei memoriam, which would be so admissible in a court of the State wherein such cause is pending, according to the laws thereof.

2 U.S.Stat. 682. *Gould v. Gould*, 3 Story 516.

§ 868. *Deposition under a dedimus potestatem, how taken.*—When a commission is issued by any court of the United States for taking the testimony of a witness named therein at any place within any district or Territory, the clerk of any court of the United States for such district or Territory shall, on the application of either party to the suit, or of his agent, issue a subpoena for such witness, commanding him to appear and testify before the commissioner named in the commission, at a time and place stated in the subpoena; and if any witness, after be-

ing duly served with such subpoena, refuses or neglects to appear, or, after appearing, refuses to testify, not being privileged from giving testimony, and such refusal or neglect is proven to the satisfaction of any judge of the court whose clerk issues such subpoena, such judge may proceed to enforce obedience to the process, or punish the disobedience, as any court of the United States may proceed in case of disobedience to process of subpoena to testify issued by such court.

4 U.S.Stat. 197. *York Co. v. Central R. R.*, 3 Wall. 113; *Sergeant v. Biddle*, 4 Wheat. 508.

§ 869. *Subpoena duces tecum* under a *dedimus potestatem*.—When either party in such suit applies to any judge of a United States court in such district or Territory for a subpoena commanding a witness, therein to be named, to appear and testify before said commissioner, at the time and place to be stated in the subpoena, and to bring with him and produce to such commissioner any paper or writing or written instrument or book or other document, supposed to be in the possession or power of such witness, and to be described in the subpoena, such judge, on being satisfied by the affidavit of the person applying, or otherwise, that there is reason to believe that such paper, writing, written instrument, book, or other document is in the possession or power of the witness, and that the same, if produced, would be competent and material evidence for the party applying therefor, may order the clerk of said court to issue such subpoena accordingly. And if the witness, after being served with such subpoena, fails to produce to the commissioner, at the time and place stated in the subpoena, any such paper, writing, written instrument, book, or other document, being in his possession or power, and described in the subpoena, and such failure is proved to the satisfaction of said judge, he may proceed to enforce obedience to said process of subpoena, or punish the disobedience in like manner as any court of the United States may proceed in case of disobedience to like process issued by such court. When any such paper, writing, written instrument, book, or other document is produced to such commissioner, he shall, at the cost of the party requiring the same, cause to be made a correct copy thereof, or of so much thereof as shall be required by either of the parties.

4 U.S.Stat. 199. 1 Burr's Trial, 183.

§ 870. Witness under a *dedimus potestatem*.—No witness shall be required, under the provisions of either of the two preceding sections, to attend at any place out of the county where he resides, nor more than forty miles from the place of his residence, to give his deposition; nor shall any witness be deemed guilty of contempt for disobeying any subpoena directed to him by virtue of either of the said sections, unless his fee for going to, returning from, and one day's attendance at, the place of examination, are paid or tendered to him at the time of the service of the subpoena.

4 U.S.Stat. 197, 199.

§ 871. Depositions in District of Columbia in suits pending elsewhere.—When a commission to take the testimony of any witness found within the District of Columbia, to be used in a suit depending in any State or territorial or foreign court, is issued from such court, or a notice to the same effect is given according to its rules of practice, and such commission or notice is produced to a justice of the supreme court of said District, and due proof is made to him that the testimony of such witness is material to the party desiring the same, the said justice shall issue a summons to the witness, requiring him to appear before the commissioners named in the commission or notice, to testify in such suit, at a time and at a place within said District therein specified.

15 U.S.Stat. 324.

§ 872. Same subject—when no commission nor notice.—When it satisfactorily appears by affidavit to any justice of the supreme court of the District of Columbia, or to any commissioner for taking depositions appointed by said court—

First. That any person within said District is a material witness for either party in a suit pending in any State or territorial or foreign court;

Second. That no commission nor notice to take the testimony of such witness has been issued or given; and

Third. That, according to the practice of the court in which the suit is pending, the deposition of a witness taken without the presence and consent of both parties will be received on the trial or hearing thereof, such officer shall issue his summons, requiring the witness to appear

before him at a place within the District, at some reasonable time, to be stated therein, to testify in such suit.

15 U.S.Stat. 325.

§ 873. Same manner of taking and transmitting the deposition.—Testimony obtained under the two preceding sections shall be taken down in writing by the officer before whom the witness appears, and shall be certified and transmitted by him to the court in which the suit is pending, in such manner as the practice of that court may require. If any person refuses or neglects to appear at the time and place mentioned in the summons, or, on his appearance, refuses to testify, he shall be liable to the same penalties as would be incurred for a like offense on the trial of a suit.

15 U.S.Stat. 325.

§ 874. Same subject—witness fees.—Every witness appearing and testifying under the said provisions relating to the District of Columbia shall be entitled to receive for each day's attendance, from the party at whose instance he is summoned, the fees now provided by law for each day he shall give attendance.

15 U.S.Stat. 325.

§ 875. Letters rogatory from United States courts.—When any commission or letter rogatory, issued to take the testimony of any witness in a foreign country, in any suit in which the United States are parties or have an interest, is executed by the court or the commissioner to whom it is directed, it shall be returned by such court or commissioner to the minister or consul of the United States nearest the place where it is executed. On receiving the same, the said minister or consul shall indorse thereon a certificate, stating when and where the same was received, and that the said deposition is in the same condition as when he received it; and he shall thereupon transmit the said letter or commission, so executed and certified, by mail, to the clerk of the court from which the same issued, in the manner in which his official dispatches are transmitted to the Government. And the testimony of witnesses so taken and returned shall be read as evidence on the trial of the suit in which it was taken, without ob-

jection as to the method of returning the same. [See §§ 4071, 4074.]

12 U.S.Stat. 770. *Nelson v. U. S.*, Pet. C. C. 235.

§ 876. Subpoenas for witnesses to run into another district.—Subpoenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district: *Provided*, That in civil causes the witnesses living out of the district in which the court is held do not live at a greater distance than one hundred miles from the place of holding the same.

1 U.S.Stat. 835. *Patapsco Insurance Co. v. Southgate*, 5 Pet. 616; *Russell v. Ashley*, Hempst. 546.

§ 877. Witnesses—form of a subpoena—attendance.—Witnesses who are required to attend any term of a circuit or district court on the part of the United States, shall be subpoenaed to attend to testify generally on their behalf, and not to depart the court without leave thereof, or of the district attorney; and under such process they shall appear before the grand or petit jury, or both, as they may be required by the court or district attorney.

10 U.S.Stat. 169.

§ 878. Witnesses in behalf of indigent defendants in criminal cases.—Whenever any person indicted in a court of the United States makes affidavit, setting forth that there are witnesses whose evidence is material to his defense; that he cannot safely go to trial without them; what he expects to prove by each of them; that they are within the district in which the court is held, or within one hundred miles of the place of trial; and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the court in term, or any judge thereof in vacation, may order that such witnesses be subpoenaed if found within the limits aforesaid. In such case the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpoenaed in behalf of the United States.

9 U.S.Stat. 74.

§ 879. Recognizance of witnesses at the hearing of charges in criminal cases.—Any judge or other officer who may be authorized to arrest and imprison or bail per-

sons charged with any crime or offense against the United States may, at the hearing of any such charge, require of any witness produced against the prisoner, on pain of imprisonment, a recognizance, with or without sureties, in his discretion, for his appearance to testify in the case. And where the crime or offense is charged to have been committed on the high seas, or elsewhere within the admiralty and maritime jurisdiction of the United States, he may, in his discretion, require a like recognizance, with such sureties as he may deem necessary, of any witness produced in behalf of the accused, whose testimony in his opinion is important, and is in danger of being otherwise lost. [See §§ 848, 1014.]

1 U.S.Stat. 91; 5 id. 517; 9 id. 73.

§ 880. Vermont—recognizance of witnesses, how taken.—In the district of Vermont, all recognizances of witnesses, taken by any magistrate in said district, for their appearance to testify in any case cognizable either in the district or circuit court thereof, shall be to the circuit court next thereafter to be held in the said district.

2 U.S.Stat. 167.

§ 881. Recognizance of witnesses required at any time on application of district attorney.—Any judge of the United States, on the application of a district attorney, and on being satisfied by proof that the testimony of any person is competent and will be necessary on the trial of any criminal proceeding in which the United States are parties or are interested, may compel such person to give recognizance, with or without sureties, at his discretion, to appear to testify therein; and, for that purpose, may issue a warrant against such person, under his hand, with or without seal, directed to the marshal or other officer authorized to execute process in behalf of the United States, to arrest and bring before him such person. If the person so arrested neglects or refuses to give recognizance in the manner required, the judge may issue a warrant of commitment against him, and the officer shall convey him to the prison mentioned therein. And the said person shall remain in confinement until he is removed to the court for the purpose of giving his testimony, or until he gives the recognizance required by said judge. [See § 848.]

9 U.S.Stat. 73.

§ 882. Copies of Department records and papers.

—Copies of any books, records, papers, or documents in any of the Executive Departments, authenticated under the seals of such Departments, respectively, shall be admitted in evidence equally with the originals thereof.

1 U.S.Stat. 69; 9 id. 347; 10 id. 297.

§ 883. Copies of records, etc., in office of Solicitor of the Treasury.—Copies of any documents, records, books, or papers in the office of the Solicitor of the Treasury, certified by him under the seal of his office, or, when his office is vacant, by the officer acting as Solicitor for the time, shall be evidence equally with the originals.

9 U.S.Stat. 347.

§ 884. Instruments, etc., of Comptroller of the Currency.—Every certificate, assignment, and conveyance executed by the Comptroller of the Currency, in pursuance of law, and sealed with his seal of office, shall be received in evidence in all places and courts; and all copies of papers in his office, certified by him and authenticated by the said seal, shall in all cases be evidence equally with the originals. An impression of such seal directly on the paper shall be as valid as if made on wax or wafer.

13 U.S.Stat. 100.

§ 885. Organization certificates of national banks.

—Copies of the organization certificate of any national banking association, duly certified by the Comptroller of the Currency, and authenticated by his seal of office, shall be evidence in all courts and places within the jurisdiction of the United States of the existence of the association, and of every matter which could be proved by the production of the original certificate. [See § 5135.]

13 U.S.Stat. 101.

§ 886. Transcripts from books, etc., of the Treasury.—When suit is brought in any case of delinquency of a revenue officer, or other person accountable for public money, a transcript from the books and proceedings of the Treasury Department, certified by the Register and authenticated under the seal of the Department, or, when the suit involves the accounts of the War or Navy Departments, certified by the Auditors respectively charged with

the examination of those accounts, and authenticated under the seal of the Treasury Department, shall be admitted as evidence, and the court trying the cause shall be authorized to grant judgment and award execution accordingly. And all copies of bonds, contracts, or other papers relating to, or connected with, the settlement of any account between the United States and an individual, when certified by the Register, or by such Auditor, as the case may be, to be true copies of the originals on file, and authenticated under the seal of the Department, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court: *Provided*, That where suit is brought upon a bond or other sealed instrument, and the defendant pleads "non est factum," or makes his motion to the court, verifying such plea or motion by his oath, the court may take the same into consideration, and, if it appears to be necessary for the attainment of justice, may require the production of the original bond, contract, or other paper specified in such affidavit.

1 U.S.Stat. 512; 3 id. 367.

Walton v. U. S., 9 Wheat. 651; U. S. v. Buford, 3 Pet. 12; Smith v. U. S., 5 Pet. 292; Cox v. U. S., 6 Pet. 172; U. S. v. Jones, 8 Pet. 375; Gratiot v. U. S., 15 Pet. 336; U. S. v. Irving, 1 How. 250; Hoyt v. U. S., 10 How. 109; U. S. v. Hodge, 13 How. 478; Bruce v. U. S., 17 How. 437; U. S. v. Gausson, 19 Wall. 198; U. S. v. Edwards, 1 McLean 467; U. S. v. Hilliard et al., 3 McLean, 324; U. S. v. Lent, 1 Paine 417; U. S. v. Martin, 2 Paine 68; U. S. v. Vanzandt, 2 Cr. C. C. 338; U. S. v. Griffith, 2 id. 366; U. S. v. Lee, 2 id. 462; U. S. v. Harrill, 1 McAll. 243; U. S. v. Patterson, Gilp. 44; U. S. v. Corwin, 1 Bond 149.

§ 887. Transcripts from books of the Treasury.—Upon the trial of any indictment against any person for embezzling public moneys, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury Department, as provided by the preceding section.

9 U.S.Stat. 63; 1 id. 512. U. S. v. Gausson, 19 Wall. 198.

§ 888. Copies of returns in returns-office.—A copy of any return of a contract returned and filed in the returns-office of the Department of the Interior, as provided by law, when certified by the clerk of the said office to be

full and complete, and when authenticated by the seal of the Department, shall be evidence in any prosecution against any officer for falsely and corruptly swearing to the affidavit required by law to be made by such officer in making his return of any contract, as required by law, to said returns-office. [See § 3744.]

12 U.S.Stat. 412.

§ 889. Copies of Post-Office records.—Copies of the quarterly returns of postmasters and of any papers pertaining to the accounts in the office of the Sixth Auditor, and transcripts from the money-order account-books of the Post-Office Department, when certified by the Sixth Auditor under the seal of his office, shall be admitted as evidence in the courts of the United States, in civil suits and criminal prosecutions; and in any civil suit, in case of delinquency of any postmaster or contractor, a statement of the account, certified as aforesaid, shall be admitted in evidence, and the court shall be authorized thereupon to give judgment and award execution, subject to the provisions of law as to proceedings in such civil suits.

5 U.S.Stat. 82; 13 id. 78; 15 id. 197; 4 id. 113. U. S. v. Hodge, 13 How. 478; Lawrence v. U. S., 2 McLean 581.

§ 890. Copies of statements of demands by Post-Office Department.—In all suits for the recovery of balances due from postmasters, a copy, duly certified under the seal of the Sixth Auditor, of the statement of any postmaster, special agent, or other person, employed by the Postmaster-General or the Auditor for that purpose, that he has mailed a letter to such delinquent postmaster at the post-office where the indebtedness accrued, or at his last usual place of abode; that a sufficient time has elapsed for said letter to have reached its destination in the ordinary course of the mail; and that payment of such balance has not been received, within the time designated in his instructions, shall be received as sufficient evidence in the courts of the United States, or other courts, that a demand has been made upon the delinquent postmaster; but when the account of a late postmaster has been once adjusted and settled, and a demand has been made for the balance appearing to be due, and afterward allowances are made or credits entered, it shall not be necessary to make a further demand for the new balance found to be due.

15 U.S.Stat. 197.

§ 891. Copies of records, etc., of General Land-Office.—Copies of any records, books, or papers in the General Land-Office, authenticated by the seal and certified by the Commissioner thereof, or, when his office is vacant, by the principal clerk, shall be evidence equally with the originals thereof. And literal exemplifications of any such records shall be held, when so introduced in evidence, to be of the same validity as if the names of the officers signing and countersigning the same had been fully inserted in such record. [See §§ 2469, 2470.]

2 U.S.Stat. 717; 5 id. 109, 111; 5 id. 627, 628; *Galt v. Galloway*, 4 Pet. 332.

§ 892. Copies of records, etc., of Patent-Office.—Written or printed copies of any records, books, papers, or drawings belonging to the Patent-Office, and of letters-patent, authenticated by the seal and certified by the Commissioner or Acting Commissioner thereof, shall be evidence in all cases wherein the originals could be evidence; and any person making application therefor, and paying the fee required by law, shall have certified copies thereof.

10 U.S.Stat. 207. *Brooks v. Jenkins*, 3 McLean 432; *Parker v. Haworth*, 4 McLean 370; *Pettibone v. Derringer*, 4 Wash. C. C. 215; *Lee v. Blandy*, 1 Bond 361; *Woodworth v. Hall*, 1 Woodb. & M. 260; *Emerson v. Hogg*, 2 Blatch. 12.

§ 893. Copies of foreign letters-patent.—Copies of the specifications and drawings of foreign letters-patent, certified as provided in the preceding section, shall be prima-facie evidence of the fact of the granting of such letters-patent, and of the date and contents thereof.

16 U.S.Stat. 207.

§ 894. Printed copies of specifications and drawings of patents.—The printed copies of specifications and drawings of patents, which the Commissioner of Patents is authorized to print for gratuitous distribution, and to deposit in the capitols of the States and Territories, and in the clerk's offices of the district courts, shall, when certified by him and authenticated by the seal of his office, be received in all courts as evidence of all matters therein contained.

16 U.S.Stat. 500.

§ 895. Extracts from the Journals of Congress.—Extracts from the Journals of the Senate, or of the House

of Representatives, and of the Executive Journal of the Senate when the injunction of secrecy is removed, certified by the Secretary of the Senate or by the Clerk of the House of Representatives, shall be admitted as evidence in the courts of the United States and shall have the same force and effect as the originals would have if produced and authenticated in court.

9 U.S.Stat. 80.

§ 896. Copies of records, etc., in offices of United States consuls, etc.—Copies of all official documents and papers in the office of any consul, vice-consul, or commercial agent of the United States, and of all official entries in the books or records of any such office, certified under the hand and seal of such officer, shall be admitted in evidence in the courts of the United States. [See § 1707.]

15 U.S.Stat. 266.

§ 897. Books and papers in offices of certain districts.—The transcripts into new books, made by the clerks of the district courts in the several districts of Texas, Florida, Wisconsin, Minnesota, Iowa, and Kansas, in pursuance of the act of June twenty-seven, eighteen hundred and sixty-four, chapter one hundred and sixty-five, from the records and journals transferred by them respectively, under the said act, to the clerks of the circuit courts in said districts, when certified by the clerks respectively making the same to be full and true copies from the original books, shall have the same force and effect as records as the originals. And the certificates of the clerks of said circuit courts, respectively, of transcripts of any of the books or papers so transferred to them, shall be received in evidence with the like effect as if made by the clerk of the court in which the proceedings were had.

13 U.S.Stat. 199.

§ 898. Transcribed records, North Carolina.—The transcripts into new books made by the clerks of the circuit and district courts for the western district of North Carolina, in pursuance of the act of June four, eighteen hundred and seventy-two, chapter two hundred and eighty-two, when certified by the clerks respectively making the same to be full and true copies from the original books, shall have the same force and effect as records as the origi-

nals. And the certificates of the clerks of said circuit and district courts respectively, of transcripts of any of the said transcribed records, shall also be received in evidence, with the like effect as if made by the proper clerk from the originals from which such records were transcribed.

17 U.S.Stat. 217.

§ 899. When original records are lost or destroyed.—When the record of any judgment, decree, or other proceeding of any court of the United States is lost or destroyed, any party or person interested therein may, on application to such court, and on showing to its satisfaction that the same was lost or destroyed without his fault, obtain from it an order authorizing such defect to be supplied by a duly certified copy of the original record, where the same can be obtained; and such certified copy shall thereafter have, in all respects, the same effect as the original record would have had.

16 U.S.Stat. 474.

§ 900. Lost records.—When any such record is lost or destroyed, and the defect cannot be supplied as provided in the preceding section, any party or person interested therein may make a written application to the court to which the record belonged, verified by affidavit, showing such loss or destruction; that the same occurred without his fault or neglect; that certified copies of such record cannot be obtained by him; and showing also the substance of the record so lost or destroyed, and that the loss or destruction thereof, unless supplied, will or may result in damage to him. The court shall cause said application to be entered of record, and a copy of it shall be served personally upon every person interested therein, together with written notice that on a day therein stated, which shall not be less than sixty days after such service, said application will be heard; and if, upon such hearing, the court is satisfied that the statements contained in the application are true, it shall make and cause to be entered of record an order reciting the substance and effect of said lost or destroyed record. Said order shall have the same effect, so far as concerns the party or person making such application and the persons served as above provided, but subject to intervening rights, which the original record would have had, if the same had not been lost or destroyed.

16 U.S.Stat. 475.

§ 901. Lost records.—When any cause has been removed to the Supreme Court, and the original record thereof is afterward lost, a duly certified copy of the record remaining in said court may be filed in the court from which the cause was removed, on motion of any party or person claiming to be interested therein; and the copy so filed shall have the same effect as the original record would have had if the same had not been lost or destroyed.

16 U.S.Stat. 475.

§ 902. Records of northern district of Illinois.—In the proceedings to restore the records of the circuit and district courts of the northern district of Illinois, destroyed by fire on the ninth of October, eighteen hundred and seventy-one, under the three preceding sections, the notice required may be served upon any non-resident of said district anywhere within the jurisdiction of the United States, or in any foreign country, the proof of the service of such notice, if made in a foreign country, to be certified by a minister or consul of the United States in such country, under his official seal.

17 U.S.Stat. 40.

§ 903. Records of northern district of Illinois.—A certified copy of the official return of the district attorney, clerk of the circuit or district court, or the marshal of the northern district of Illinois, made in pursuance of law, and on file in the Department of Justice, relating to any cause in either of said courts to which the United States was a party, the record of which was destroyed in said fire, may be filed in the court to which it appertains, and shall have the same force and effect as if it were an original return made to said court; and in any case in which the names of the parties, and the date and amount of the judgment or decree shall appear from such returns, it shall be lawful for the court in which they are filed to issue the necessary process to enforce such decree or judgment in the same manner as if the original record was before said court.

17 U.S.Stat. 41.

§ 904. Records of northern district of Illinois.—It shall be the duty of the district attorney for the northern district of Illinois to take such steps as may be necessary to restore the records and files of the circuit and dis-

trict courts of said district, which were destroyed by fire on the ninth of October, eighteen hundred and seventy-one, and in which the United States is interested, so far as the judges of said courts, respectively, shall deem it essential to the interests of the United States that said records and files be restored; and the judges of said courts, respectively, are authorized to direct such steps to be taken as, in their opinion, shall be deemed advisable to restore the judgment dockets and indices of said courts, and for that purpose may direct the performance, by the clerks of said courts, and by the United States attorney for said district, of any duty incident thereto; and said clerks and said district attorney shall be allowed such compensation and disbursements for services rendered under this section (in cases where no compensation is now provided by law for such services) as may be allowed by the Attorney-General, and certified to be just and reasonable by the judge of the court in which said services are rendered, and the amount so allowed shall be paid out of the judiciary fund: *Provided, however,* That the sum allowed the clerks of said court shall not exceed the sum of twelve thousand dollars, and the entire compensation of the United States attorney for such services shall not exceed the sum of six thousand dollars.

17 U.S.Stat. 41.

§ 905. Authentication of legislative acts and proof of judicial proceedings of States, etc.—The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.

1 U.S.Stat. 122; 2 id. 299.

Ferguson v. Harwood, 7 Cranch 408; *Mills v. Duryee*, 7 id. 481; *U. S. v. Amedy*, 11 Wheat. 392; *Buckner v. Finley*, 2 Pet. 592; *Owings v. Hull*, 9 id. 627; *Urtetiqui v. D'Arbel*, id. 700; *McElmoyle v. Cohen*, 13 Pet. 312; *Stacy v. Thrasher*, 6 How. 59; *Bk of Alabama v. Dalton*, 9 How. 528; *D'Arcy v. Ketchum*, 11 How. 176; *Philadelphia W. & B. R. R. Co. v. Howard*, 13 How. 307; *Booth v. Clark*, 17 How. 322; *Mason v. Lawrason*, 1 Cranch C. C. 190; *Parrot v. Habersham*, id. 14; *Gardner v. Lindo*, id. 190; *Hade v. Brotherton*, 3 id. 594; *James v. Stookey*, 1 Wash. C. C. 330; *Talcott v. Delaware Ins. Co.*, 2 id. 449; *Turner v. Waddington*, 3 id. 126; *Catlin v. Underhill*, 4 McLean 199; *Morgan v. Curtienius*, id. 366; *Mewster v. Spalding*, 6 id. 24; *Stewart v. Gray*, *Hempst.* 94; *Buford v. Hickman*, id. 232; *Trigg v. Conway*, id. 538; *Craig v. Brown*, *Pet. C. C.* 354; *Bennett v. Bennett*, *Deady* 299.

§ 906. **Proofs of records, etc., kept in offices not pertaining to courts.**—All records and exemplifications of books, which may be kept in any public office of any State or Territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other State or Territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal, of the State or Territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the State, Territory, or country, as aforesaid, from which they are taken.

2 U.S.Stat. 298, 299; 16 id. 419.

§ 907. **Copies of foreign records, etc.—land-titles.**—It shall be lawful for any keeper or person having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign

government or its agents, relating to the title to lands claimed by or under the United States, on the application of the head of one of the Departments, the Solicitor of the Treasury, or the Commissioner of the General Land-Office, to authenticate copies thereof under his hand and seal, and to certify them to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents, respectively; and when such copies are certified by an American minister or consul, under his hand and seal of office, to be true copies of the originals, they shall be sealed up by him and returned to the Solicitor of the Treasury, who shall file them in his office, and cause them to be recorded in a book to be kept for that purpose. A copy of any such law, judgment, order, decree, journal, correspondence, or other public document, so filed, or of the same so recorded in said book, may be read in evidence in any court where the title to land claimed by or under the United States may come into question, equally with the originals.

9 U.S.Stat. 346; 9 id. 350.

§ 908. Little & Brown's edition of the Statutes.

—The edition of the laws and treaties of the United States, published by Little & Brown, shall be competent evidence of the several public and private acts of Congress, and of the several treaties therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.

9 U.S.Stat. 76.

§ 909. Burden of proof, when it lies on claimant in seizure cases.—In suits or informations brought, where any seizure is made pursuant to any act providing for or regulating the collection of duties on imports or tonnage, if the property is claimed by any person, the burden of proof shall lie upon such claimant: *Provided*, That probable cause is shown for such prosecution, to be judged of by the court.

1 U.S.Stat. 678. *Locke v. U. S.*, 7 Cranch 339; *The Luminary*, 8 Wheat. 407; *Clifton v. U. S.*, 4 How. 242; *Buckley v. U. S.*, 4 How. 251; *Cliquot's Champagne*, 3 Wall. 143; *The John Griffin*, 15 Wall. 29; *U. S. v. An Open Boat*, 5 Mas. 232.

DESTY F. PROC. 16.

§ 910. Possessory actions for recovery of mining titles.—No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession.

13 U.S.Stat. 441.

CHAPTER XVIII.

PROCEDURE.

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§ 911. Sealing and testing of writs.—All writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue, and shall be signed by the clerk thereof. Those issuing from the Supreme Court or a circuit court shall bear teste of the Chief Justice of the United States, or, when that office is vacant, of the associate justice next in precedence, and those issuing from a district court shall bear teste of the judge, or, when that office is vacant, of the clerk thereof. The seals of the said courts shall be provided at the expense of the United States.

1 U.S.Stat. 275.

§ 912. Teste of process, day of.—All process issued from the courts of the United States shall bear teste from the day of such issue.

17 U.S.Stat. 197.

§ 913. Mesne process, and proceedings in equity and admiralty.—The forms of mesne process and the forms and modes of proceeding in suits of equity and of admiralty and maritime jurisdiction in the circuit and district courts, shall be according to the principles, rules, and usages which belong to courts of equity and of admiralty, respectively, except when it is otherwise provided by statute or by rules of court made in pursuance thereof; but the same shall be subject to alteration and addition by the said courts, respectively, and to regulation by the Supreme Court, by rules prescribed, from time to time, to any circuit or district court, not inconsistent with the laws of the United States.

1 U.S.Stat. 93; 1 id. 276; 4 id. 278; 5 id. 499.

Independent of State legislation, *Wayman v. Southard*, 10 Wheat. 1; *Beers v. Haughton*, 9 Pet. 359. Forms and modes of process, *Grayson v. Virginia*, 3 Dall. 320; *Bk of U. S. v. Halstead*, 10 Wheat. 51. Of procedure, *Manro v. Almeida*, 10 Wheat. 488; *Ex parte Crane*, 5 Pet. 210; *Harrison v. Nixon*, 9 Pet. 507. Rules of pleading, *McKinlay v. Morrish*, 21 How. 847. Of practice, *Duncan v. U. S.*, 7 Pet. 435. Of practice and procedure in chancery, *Boyle v. Zachario*, 6 Pet. 658; *Story v. Livingston*, 13 Pet. 359; *Gaines v. Belf*, 15 Pet. 9; *Pennsylvania v. Wheeling etc. Bridge Co.*, 13 How. 564.

§ 914. Other than equity and admiralty causes.—The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the circuit and district courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of court to the contrary notwithstanding.

17 U.S.Stat. 197.

In general, *McNutt v. Bland*, 2 How. 17; *Soars v. Eastburn*, 10 How. 187; *Ward v. Chamberlain*, 2 Black 436; *U. S. v. Council of Keokuk*, 6 Wall. 514. Legal and equitable rights and remedies distinguished, *Fenn v. Holme*, 21 How. 481; *Hooper v. Scheimer*, 23 How. 249; *Sheirburn v. de Cordova*, 24 How. 423. Nonsuit, *Elmore v. Grymes*, 1 Pet. 469. Set-off, *U. S. v. Robeson*, 9 Pet. 319; *Wilcox v. Hunt*, 13 Pet. 378. Agreement of counsel, *Minor v. Tillotson*, 2 How. 392. Summary proceedings, *Gwin v. Barton*, 6 How. 7. Trial of issues, *Townsend v. Jemison*, 7 How. 706. Review on appeal, 7 How. 833; *Nudd v. Burdows*, 8 Ch. L. N. 129.

§ 915. Attachments.—In common law causes in the circuit and district courts the plaintiff shall be entitled to similar remedies, by attachment or other process, against the property of the defendant, which are now provided by the laws of the State in which such court is held for the courts thereof; and such circuit or district courts may, from time to time, by general rules, adopt such State laws as may be in force in the States where they are held in relation to attachments and other process: *Provided*, That similar preliminary affidavits or proofs, and similar security, as required by such State laws, shall be first furnished by the party seeking such attachment or other remedy.

; 17 U.S.Stats. 197; *Gillon v. Fountain*, 8 Chicago L. News. 25; 7 Leg. Gazette 321.

§ 916. Executions in common-law causes.—The party recovering a judgment in any common-law cause in any circuit or district court, shall be entitled to similar

remedies upon the same, by execution or otherwise, to reach the property of the judgment debtor, as are now provided in like causes by the laws of the State in which such court is held, or by any such laws hereafter enacted which may be adopted by general rules of such circuit or district court; and such courts may, from time to time, by general rules, adopt such State laws as may hereafter be in force in such State in relation to remedies upon judgments, as aforesaid, by execution or otherwise.

17 U.S.Stat. 197. *Wayman v. Southard*, 10 Wheat. 1; *Bank U. S. v. Halstead*, 10 Wheat. 51; *Boyle v. Zachario*, 6 Pet. 648; *Beers v. Haughton*, 9 Pet. 331; *Ross v. Duval*, 13 Pet. 45; *U. S. v. Knight*, 14 Pet. 301; *Amis v. Smith*, 16 Pet. 303; *Massingill v. Downs*, 7 How. 760.

§ 917. Power of the Supreme Court to regulate the practice of circuit and district courts.—The Supreme Court shall have power to prescribe, from time to time, and in any manner not inconsistent with any law of the United States, the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of taking and obtaining evidence, of obtaining discovery, of proceeding to obtain relief, of drawing up, entering, and enrolling decrees, and of proceeding before trustees appointed by the court, and generally to regulate the whole practice, to be used, in suits in equity or admiralty, by the circuit and district courts.

5 U.S.Stat. 518. *Wayman v. Southard*, 10 Wheat. 1; *Poultney v. City of Lafayette*, 12 Pet. 472; *The Steamer St. Lawrence*, 1 Black 522; *Noonan v. Lee*, 2 Black 509; *Goodyear v. Providence Rubber Co.*, 2 Cliff. 351; *Gray v. Chicago etc. R. R. Co.* 1 Wool. 63; *Jenkins v. Greenwald*, 1 Bond 126; *Gaines v. Travis*, 1 Abb. Adm. 422.

§ 918. Practice in the several courts to be regulated by their own rules.—The several circuit and district courts may, from time to time, and in any manner not inconsistent with any law of the United States, or with any rule prescribed by the Supreme Court under the preceding section, make rules and orders directing the returning of writs and processes, the filing of pleadings, the taking of rules, the entering and making up of judgments by default, and other matters in vacation, and otherwise regulate their own practice as may be necessary or convenient for the advancement of justice and the prevention of delays in proceedings.

1 U.S.Stat. 335; 5 id. 518. *Bk of U. S. v. White*, 8 Pet. 262; *Beers v. Haughton*, 9 Pet. 329; *Poultney v. City of Lafayette*, 12 Pet. 472.

Philadelphia etc. R. R. v. Stimpson, 14 Pet. 448; Wayman v. Southard, 10 Wheat. 43; Mills v. Bank U. S., 11 Wheat. 431; The Steamer St. Lawrence, 1 Black 522.

§ 919. Suits for duties, imposts, taxes, penalties, or forfeitures.—All suits for the recovery of any duties, imposts, or taxes, or for the enforcement of any penalty or forfeiture provided by any act respecting imports or tonnage, or the registering and recording or enrolling and licensing of vessels, or the internal revenue, or direct taxes, and all suits arising under the postal laws, shall be brought in the name of the United States.

1 U.S.Stat. 695, 696; 1 id. 176; 1 id. 298; 1 id. 317; 14 id. 111, 145; 17 id. 323.

§ 920. Consolidation of revenue seizures.—Whenever two or more things belonging to the same person are seized for an alleged violation of the revenue laws, the whole must be included in one suit; and if separate actions are prosecuted in such cases, the court shall consolidate them.

10 U.S.Stat. 162.

§ 921. Orders to save costs.—When causes of a like nature or relative to the same question are pending before a court of the United States, or of any Territory, the court may make such orders and rules concerning proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice, and may consolidate said causes when it appears reasonable to do so.

3 U.S.Stat. 21.

§ 922. When the marshal or his deputy is a party in a cause.—When the marshal or his deputy is a party in any cause, the writs and precepts therein shall be directed to such disinterested person as the court or any justice or judge thereof may appoint, and the person so appointed may execute and return them.

1 U.S.Stat. 87.

§ 923. Seizures for forfeiture in certain cases.—When any vessel, goods, wares, or merchandise are seized by any officer of the customs, and prosecuted for forfeiture by virtue of any law respecting the revenue, or the registering and recording, or the enrolling and licensing of vessels, the court shall cause fourteen days' notice to be given

of such seizure and libel, by causing the substance of such libel, with the order of the court thereon, setting forth the time and place appointed for trial, to be inserted in some newspaper published near the place of seizure, and by posting up the same in the most public manner for the space of fourteen days, at or near the place of trial; and proclamation shall be made in such manner as the court shall direct. And if no person appears and claims such vessel, goods, wares, or merchandise, and gives bond to defend the prosecution thereof and to respond the cost in case he shall not support his claim, the court shall proceed to hear and determine the cause according to law.

1 U.S.Stat. 678, 695, 696; 1 id. 176; 1 id. 298; 1 id. 317.

§ 924. Attachment in postal suits.— In all cases where debts are due from defaulting or delinquent postmasters, contractors, or other officers, agents, or employes of the Post-Office Department, a warrant of attachment may issue against all real and personal property and legal and equitable rights belonging to such officer, agent, or employé, and his sureties, or either of them, in the following cases:

First. When such officer, agent, or employé, and his sureties, or either of them, is a non-resident of the district where such officer, agent, or employé was appointed, or has departed from such district for the purpose of permanently residing out of the same, or of defrauding the United States, or of avoiding the service of civil process.

Second. When such officer, agent, or employé, and his sureties, or either of them, has conveyed away, or is about to convey away his property, or any part thereof, or has removed or is about to remove the same, or any part thereof, from the district wherein it is situate, with intent to defraud the United States.

And when any such property has been removed, certified copies of the warrant may be sent to the marshal of the district into which the same has been removed, under which certified copies he may seize said property and convey it to some convenient point within the jurisdiction of the court from which the warrant originally issued. And alias warrants may be issued in such cases upon due application, and the validity of the warrant first issued shall continue until the return day thereof.

13 U.S.Stat. 432, 433.

§ 925. Application for warrant.—Application for such warrant of attachment may be made by any district or assistant district attorney, or any other person authorized by the Postmaster-General, before the judge, or, in his absence, before the clerk of any court of the United States having original jurisdiction of the cause of action. And such application shall be made upon an affidavit of the applicant, or of some other credible person, stating the existence of either of the grounds of attachment enumerated in the preceding section, and upon production of legal evidence of the debt.

13 U.S.Stat. 433.

§ 926. Issuing warrant—duty of clerk and marshal.—Upon any such application and upon due order of any judge of the court, or, in his absence, without such order, the clerk shall issue a warrant for the attachment of all the property of any kind belonging to the person specified in the affidavit, which warrant shall be executed with all possible dispatch by the marshal, who shall take the property attached, if personal, into his custody, and hold the same subject to all interlocutory or final orders of the court.

13 U.S.Stat. 433.

§ 927. Ownership of attached property—trial—other remedies.—At any time within twenty days before the return day of such warrant, the party whose property is attached may, on giving notice to the district attorney of his intention, file a plea in abatement, traversing the allegations of the affidavit, or denying the ownership of the property attached to be in the defendants or either of them; in which case the court may, upon application of either party, order an immediate trial by jury of the issues raised by the affidavit and plea; but the parties may, by consent, waive a trial by jury, in which case the court shall decide the issues raised. And any party claiming ownership of the property attached and a specific return thereof, shall be confined to the remedy herein afforded, but his right to an action of trespass, or other action for damages, shall not be impaired hereby.

13 U.S.Stat. 433.

§ 928. Proceeds of attached property to be invested.—When the property attached is sold on any interlocu-

tory order of the court or is producing any revenue, the money arising from such sale or revenue shall be invested in securities of the United States, under the order of the court, and all accretions shall be held subject to the orders of the same.

13 U.S.Stat. 433.

§ 929. Publication of attachment.—Immediately upon the execution of any such warrant of attachment, the marshal shall cause due publication thereof to be made, in the case of absconding debtors for two months and of non-residents for four months. The publication shall be made in some newspaper published in the district where the property is situate, and the details thereof shall be regulated by the order under which the warrant is issued.

13 U.S.Stat. 434.

§ 930. Persons having property of defendants to account for it—sales void—personal notice.—After the first publication of such notice of attachment as required by law, every person indebted to, or having possession of any property belonging to, the said defendants, or either of them, and having knowledge of such notice, shall account and answer for the amount of such debt and the value of such property; and any disposal or attempt to dispose of any such property, to the injury of the United States, shall be illegal and void. And when the person indebted to, or having possession of the property of, such defendants, or either of them, is known to the district attorney or marshal, such officer shall see that personal notice of the attachment is served upon such person, but the want of such notice shall not invalidate the attachment.

13 U.S.Stat. 434.

§ 931. Discharge of attachment—bond.—Upon application of the party whose property has been attached, the court, or any judge thereof, may discharge the warrant of attachment as to the property of the applicant, provided such applicant shall execute to the United States a good and sufficient penal bond, in double the value of the property attached, to be approved by a judge of the court, and with condition for the return of said property, or to answer any judgment which may be rendered by the court in the premises.

13 U.S.Stat. 434.

§ 932. Accrued rights not to be abridged.—Nothing contained in the preceding eight sections shall be construed to limit or abridge, in any manner, such rights of the United States as have accrued or been allowed in any district under the former practice of, or the adoption of State laws by, the United States courts.

13 U.S.Stat. 434.

§ 933. Attachments dissolved in conformity with State laws.—An attachment of property, upon process instituted in any court in the United States, to satisfy such judgment as may be recovered by the plaintiff therein, except in the cases mentioned in the preceding nine sections, shall be dissolved when any contingency occurs by which, according to the laws of the State where said court is held, such attachment would be dissolved upon like process instituted in the courts of said State: *Provided*, That nothing herein contained shall interfere with any priority of the United States in the payment of debts.

9 U.S.Stat. 213; 13 id. 432, 434.

§ 934. Property taken under revenue laws irrepleviable.—All property taken or detained by any officer or other person, under authority of any revenue law of the United States, shall be irrepleviable, and shall be deemed to be in the custody of the law, and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof.

4 U.S.Stat. 632; 14 id. 172.

§ 935. Garnishees in suits by the United States, on notes, etc.—In any suit by the United States against a corporation for the recovery of money upon a bill, note, or other security, the debtors of the corporation may be summoned as garnishees; and it shall be the duty of any person so summoned to appear in open court and to depose, in writing, to the amount which he was indebted to the said corporation at the time of the service of the summons and at the time of making such deposition; and judgment may be entered in favor of the United States for the sum admitted by such garnishee to be due to the said corporation, in the same manner as if it had been due to the United States: *Provided*, That no judgment shall be entered against any garnishee until after judgment has been rendered against

the corporation defendant to the said action, or until the sum in which the garnishee stands indebted is actually due.

3 U.S.Stat. 443.

§ 936. Issue tendered when garnishee denies indebtedness.—When any person summoned as garnishee deposes in open court that he is not, and was not at the time of the service of the summons, indebted to such corporation, an issue may be tendered by the United States upon such demand, and if, upon the trial of that issue, a verdict is rendered against the garnishee, judgment shall be entered in favor of the United States, pursuant to such verdict, with costs of suit.

3 U.S.Stat. 443.

§ 937. Garnishee failing to appear.—If any person summoned as garnishee, as aforesaid, fails to appear at the term of the court to which he is summoned, he shall be subject to attachment for contempt of the court.

3 U.S.Stat. 444.

§ 938. Bailing of property seized under customs laws.—Upon the prayer of any claimant to the court, that any vessel, goods, wares, or merchandise, seized and prosecuted under any law respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels, or any part thereof, should be delivered to him, the court shall appoint three proper persons to appraise such property, who shall be sworn in open court, or before a commissioner appointed by the district court to administer oaths to appraisers, for the faithful discharge of their duty; and the appraisement shall be made at the expense of the party on whose prayer it is granted. If, on the return of the appraisement, the claimant, with one or more sureties, to be approved by the court, shall execute a bond to the United States for the payment of a sum equal to the sum at which the property prayed to be delivered is appraised, and produce a certificate from the collector of the district where the trial is had, and of the naval officer thereof, if any there be, that the duties on the goods, wares, and merchandise, or tonnage-duty on the vessel so claimed, have been paid or secured in like manner as if the same had been legally entered, the court shall, by rule, order such vessel, goods, wares, or merchandise to be delivered to such claimant;

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and the said bond shall be lodged with the proper officer of the court. If judgment passes in favor of the claimant, the court shall cause the said bond to be canceled; but if judgment passes against the claimant, as to the whole or any part of such vessel, goods, wares, or merchandise, and the claimant does not within twenty days thereafter pay into the court, or to the proper officer thereof, the amount of the appraised value of such vessel, goods, wares, or merchandise so condemned, with the costs, judgment shall be granted upon the bond, on motion in open court, without further delay. [See § 570.]

1 U.S.Stat. 695, 696; 1 id. 176; 1 id. 298; 1 id. 317; 1 id. 395.

§ 939. Sale after condemnation.—All vessels, goods, wares, or merchandise which shall be condemned by virtue of any law respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels, and for which bonds shall not have been given by the claimant, shall be sold by the marshal or other proper officer of the court in which condemnation shall be had, to the highest bidder, at public auction, by order of such court, and at such place as the court may appoint, giving at least fifteen days' notice (except in cases of perishable merchandise) in one or more of the public newspapers of the place where such sale shall be; or if no paper is published in such place, in one or more of the papers published in the nearest place thereto; for which advertising a sum not exceeding five dollars shall be paid. And the amount of such sales, deducting all proper charges, shall be paid within ten days after such sale by the person selling the same to the clerk or other proper officer of the court directing such sale, to be by him, after deducting the charges allowed by the court, paid to the collector of the district in which such seizure or forfeiture has taken place, as hereinbefore directed.

1 U.S.Stat. 696; 1 id. 177; 1 id. 298; 1 id. 317.

§ 940. In cases of seizure, bailing of property in vacation.—In any cause of admiralty and maritime jurisdiction, or other case of seizure, depending in any court of the United States, any judge of the said court, in vacation, shall have the same authority to order any vessel, or cargo, or other property to be delivered to the claimants, upon bail or bond, or to be sold when necessary, as the said court has in term time, and to appoint appraisers, and

exercise every other incidental power necessary to the complete execution of the authority herein granted; and the recognizance of bail or bond, under such order, may be executed before the clerk upon the party's producing the certificate of the collector of the district, of the sufficiency of the security offered; and the same proceedings shall be had in case of said order of delivery or of sale as are had in like cases when ordered in term time: *Provided*, That upon every such application, either for an order of delivery or of sale, the collector and the attorney of the district shall have reasonable notice in cases of the United States, and the party or counsel in all other cases.

4 U.S.Stat. 503; 1 id. 695, 696; 1 id. 176; 1 id. 298; 1 id. 317.

§ 941. Delivery bond in admiralty proceedings.—

When a warrant of arrest or other process in rem is issued in any cause of admiralty jurisdiction, except the cases of seizure for forfeiture under any law of the United States, the marshal shall stay the execution of such process, or discharge the property arrested if the process has been levied, on receiving from the claimant of the property a bond or stipulation in double the amount claimed by the libellant, with sufficient surety, to be approved by the judge of the court where the cause is pending, or, in his absence, by the collector of the port, conditioned to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court, and judgment thereon, against both the principal and sureties, may be recovered at the time of rendering the decree in the original cause.

9 U.S.Stat. 181; 1 id. 695, 696; 1 id. 176; 1 id. 298; 1 id. 317.

§ 942. Special bail required in suits for duties and penalties.—

In all suits or prosecutions for the recovery of duties or pecuniary penalties prescribed by the laws of the United States, commenced in any State where, by the laws thereof, imprisonment for debt shall not have been abolished, the person against whom process is issued shall be held to special bail, subject to the rules which prevail in civil suits in which special bail is required.

1 U.S.Stat. 676; 5 id. 321; 5 id. 410.

§ 943. When defendant giving bail in one district is committed in another.—When a defendant who has procured bail to respond to the judgment in a suit,

in any court of the United States in any district is afterward arrested in any other district and is committed to a jail, the use of which has been ceded to the United States for the custody of prisoners, the judge of the court wherein the suit in which the defendant has so procured bail is depending, shall, at the request of the bail, order that such defendant be held in said jail, in the custody of the marshal of the district in which it is. The said marshal, upon the delivery of such order, duly authenticated, shall receive such person into his custody, and thereupon be chargeable for an escape, and shall forthwith make a certificate, under his hand and seal, of such commitment, and transmit the same to the court from which the order issued, and, if required, shall make and deliver to such bail or to his attorney a duplicate thereof. Upon the return of said certificate, the court which made the said order, or any judge thereof, may direct that an exoneration be entered upon the bail-piece, where special bail shall have been found, or otherwise discharge such bail.

1 U.S.Stat. 727.

§ 944. Defendant held until judgment in the first suit.—When a defendant is committed by virtue of the order provided in the preceding section, he shall, unless sooner discharged by law, be holden in jail until final judgment is rendered in the suit in which he procured bail as aforesaid, and sixty days thereafter, if such judgment is rendered against him, in order that he may be charged in execution, which may, in such cases, be directed to and served by the marshal in whose custody he is.

1 U.S.Stat. 727.

§ 945. Bail and affidavits may be taken by commissioners of circuit courts.—Bail and affidavits, when required or allowed in any civil cause in any circuit or district court, may be taken by a commissioner of the circuit court for the district; and such acknowledgments of bail and affidavits shall have the same effect as if taken before any judge of such courts.

2 U.S.Stat. 679; 3 id. 350.

§ 946. Calling of bail, in Kentucky.—When a bail-bond is given for the appearance of any person to answer in the district or circuit court for the district of Kentucky, the clerk of such court shall call the party at the time he

is bound to appear. If the party fails, the clerk shall enter such failure on his minutes, and on said entry judgment may afterward be made of record by the court; but if the party appears, the clerk shall take another bond, with sureties similar to the first, for further appearance at the next succeeding term of the court, and if the party fails to give such other bond and surety, he shall stand committed by order of the clerk until he complies.

12 U.S.Stat. 387.

§ 947. When clerks may take bail de bene esse.—Recognizances of special bail may be taken de bene esse by the clerks of the circuit and district courts, in the absence or in case of the disability of the judges, in any action depending in either of the said courts, where special bail is demandable.

1 U.S.Stat. 278.

§ 948. Amendment of process.—Any circuit or district court may at any time, in its discretion and upon such terms as it may deem just, allow an amendment of any process returnable to or before it, where the defect has not prejudiced, and the amendment will not injure the party against whom such process issues.

17 U.S.Stat. 197.

§ 949. Priority of cases in which a State is a party.—When a State is a party, or the execution of the revenue laws of a State is enjoined or stayed, in any suit in a court of the United States, such State or the party claiming under the revenue laws of a State, the execution whereof is enjoined or stayed, shall be entitled, on showing sufficient reason, to have the cause heard at any time after it is docketed, in preference to any civil cause pending in such court between private parties.

16 U.S.Stat. 176.

§ 950. Notice of case for trial.—In all civil actions in the courts of the United States either party may notice the same for trial.

16 U.S.Stat. 439.

§ 951. Suits of United States against individuals, what credits allowed.—In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been

presented to the accounting officers of the Treasury, for their examination, and to have been by them disallowed, in whole or in part, unless it is proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the Treasury by absence from the United States or by some unavoidable accident.

1 U.S.Stat. 514. *U. S. v. Giles*, 9 Cranch 236; *Thelusson v. Smith*, 2 Wheat. 425; *U. S. v. Wilkins*, 6 id. 143; *Walton v. U. S.*, 9 id. 651; *Cox v. U. S.*, 6 Pet. 202; *U. S. v. Ripley*, 7 id. 25; *U. S. v. Fillebrown*, 7 id. 48; *U. S. v. Robeson*, 9 id. 319; *U. S. v. Hawkins*, 10 id. 125; *U. S. v. Laub*, 12 id. 1; *U. S. v. Bank of Metropolis*, 15 id. 377; *Gratiot v. U. S.*, 4 How. 112; *U. S. v. Buchanan*, 8 id. 105; *Bruce v. U. S.*, 17 id. 440; *DeGroot v. U. S.*, 5 Wall. 431; *U. S. v. Eckford*, 6 id. 484; *U. S. v. Gilmore*, 7 id. 491; *Halliburton v. U. S.*, 13 id. 63.

§ 952. In suits under postal laws, what credits allowed.—No claim for a credit shall be allowed upon the trial of any suit for delinquency against a postmaster, contractor, or other officer, agent, or employé of the Post-Office Department, unless the same has been presented to the Sixth Auditor and by him disallowed, in whole or in part, or unless it is proved to the satisfaction of the court that the defendant is, at the time of trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting to the said Auditor a claim for such credit by some unavoidable accident.

5 U.S.Stat. 82. *U. S. v. Roberts*, 9 How. 501; *U. S. v. Hodge*, 13 How. 478; *Ware v. U. S.*, 4 Wall. 617.

§ 953. Bill of exceptions.—A bill of exceptions allowed in any cause shall be deemed sufficiently authenticated if signed by the judge of the court in which the cause was tried, or by the presiding judge thereof, if more than one judge sat on the trial of the cause, without any seal of court or judge being annexed thereto.

17 U.S.Stat. 197.

§ 954. Defects of form—amendments.—No summons, writ, declaration, return, process, judgment, or other proceedings in civil causes, in any court of the United States, shall be abated, arrested, quashed, or reversed for any defect or want of form; but such court shall proceed and give judgment according as the right of the cause and matter in law shall appear to it, with-

out regarding any such defect, or want of form, except those which, in cases of demurrer, the party demurring specially sets down, together with his demurrer, as the cause thereof; and such court shall amend every such defect and want of form, other than those which the party demurring so expresses; and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as it shall, in its discretion and by its rules, prescribe.

1 U.S.Stat. 91.

Discretion of court, *Matheson v. Grant*, 2 How. 263. To pleadings, *Brig Caroline v. U. S.*, 7 Cranch 496; *The Marianna Flora*, 11 Wheat. 1; *Jackson v. Ashton*, 10 Pet. 480; *Garland v. Davis*, 4 How. 131; *Stockton v. Bishop*, id. 155; *Conrad v. Griffey*, 11 How. 480; *Railroad Co. v. Lindsay*, 4 Wall. 650; *Neale v. Neales*, 9 Wall. 1; *Swatzel v. Arnold*, 1 Woolw. 383; *Reppert v. Robinson*, Taney 492; *Battle v. Mut. Ins. Co.*, 10 Blatch. 417; *U. S. v. Distilled Spirits*, 1 Abb. U. S. 573; *U. S. v. Batchelder*, 6 Int. Rev. Rec. 93; *U. S. v. Whiskey*, 11 Int. Rev. Rec. 109; *U. S. v. The Queen*, 4 Ben. 237. Not to introduce new subject, *Houseman v. Schooner North Carolina*, 15 Pet. 40. To verdict, *Parks v. Turner*, 12 How. 39. To judgment, *Bank of Kentucky v. Wistar*, 3 Pet. 431; *Woodward v. Broom*, 13 Pet. 1; *Bank of U. S. v. Moss*, 6 How. 38. To record, *Kennedy v. Georgia Bank*, 8 How. 586; *Hudgins v. Kemp*, 18 How. 530. To transcript, *Hodges v. Vaughan*, 19 Wall. 12. To writ of error, *Insurance Co. v. Mordecai*, 21 How. 195; *Porter v. Foley*, id. 393; *McVeigh v. U. S.*, 8 Wall. 640.

§ 955. Death of parties.—When either of the parties, whether plaintiff or petitioner, or defendant, in any suit in any court of the United States, dies before final judgment, the executor or administrator of such deceased party may, in case the cause of action survives by law, prosecute or defend any such suit to final judgment. The defendant shall answer accordingly; and the court shall hear and determine the cause and render judgment for or against the executor or administrator, as the case may require. And if such executor or administrator, having been duly served with a scire facias from the office of the clerk of the court where the suit is depending, twenty days beforehand, neglects or refuses to become party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party. The executor or administrator who becomes a party as aforesaid, shall, upon motion to the court, be entitled to a continuance of the suit until the next term of said court.

1 U.S.Stat. 90. In general, *Greene v. Watkins*, 6 Wheat. 260; *Baribean v. Brant*, 17 How. 43; *McClane v. Boon*, 6 Wall. 244; *Griswold v. Hill*, 1 Paine 483; *Hatch v. Eustis*, 1 Gall. 160. Of plaintiff, *Wilson v. Codman*, 3 Cranch 193; *McOoul v. Secamp*, 2 Wheat. 111; *Macker v. Thomas*, 7 id. 530; *Clay v. Smith*, 3 Pet. 411. Of defendant, *McNutt v. Bland*, 2 How. 28.

§ 956. When one of several plaintiffs or defendants dies.—If there are two or more plaintiffs or defendants, in a suit where the cause of action survives to the surviving plaintiff or against the surviving defendant, and one or more of them dies, the writ or action shall not be thereby abated ; but, such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff against the surviving defendant.

1 U.S.Stat. 90.

§ 957. Delinquents for public money—judgment at return term, unless, etc.—When suit is brought by the United States against any revenue officer or other person accountable for public money, who neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant, in open court, (the United States attorney being present) makes and subscribes an oath that he is equitably entitled to credits which had been, previous to the commencement of the suit, submitted to the accounting officers of the Treasury, and rejected ; specifying in the affidavit each particular claim so rejected, and that he cannot then safely come to trial. If the court, when such oath is made, subscribed, and filed, is thereupon satisfied, a continuance until the next succeeding term may be granted. Such continuance may also be granted when the suit is brought upon a bond or other sealed instrument, and the defendant pleads non est factum, or makes a motion to the court, verifying such plea or motion by his oath, and the court thereupon requires the production of the original bond, contract, or other paper specified in the affidavit. And no continuance shall be granted except as herein provided.

1 U.S.Stat. 514.

§ 958. Judgment for suits under postal laws.—In suits arising under the postal laws the court shall proceed

to trial, and render judgment at the return term; but whenever service of process is not made at least twenty days before the return day of such term, the defendant is entitled to one continuance, if, on his statement, the court deems it expedient; and if he makes affidavit that he has a claim against the Post-Office Department, which has been submitted to and disallowed by the Sixth Auditor, specifying such claim in his affidavit, and that he could not be prepared for trial at such term for want of evidence, the court, if satisfied thereof, may grant a continuance until the next term.

4 U.S.Stat. 113; 5 id. 82.

§ 959. Judgment for suits on debentures.—In all suits for the recovery of money upon debentures issued by the collectors of customs, under any act for the collection of duties, it shall be the duty of the court to grant judgment at the return term, unless the defendant, in open court, exhibits some plea, on oath, by which the court is satisfied that a continuance is necessary to the attainment of justice; in which case, and not otherwise, a continuance until the next term may be granted.

1 U.S.Stat. 688, 689. Ex parte U. S., 8 Pet. 700.

§ 960. Suits on bonds for recovery of duties.—When suit is brought on any bond for the recovery of duties due to the United States, it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant, in open court, (the United States attorney being present) makes oath that an error has been committed in the liquidation of the duties demanded upon such bond, specifying the errors alleged to have been committed, and that the same have been notified in writing to the collector of the district before the said return term; whereupon a continuance may be granted until the next term, and no longer, if the court is satisfied that such continuance is necessary for the attainment of justice.

1 U.S.Stat. 676. Ex parte U. S., 8 Pet. 700.

§ 961. Judgment for sum due in equity on bonds, etc.—In all suits brought to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, where the forfeiture, breach, or non-performance appears by the default or confession of the defendant, or upon demurrer, the court shall render judg-

ment for the plaintiff to recover so much as is due according to equity. And when the sum for which judgment should be rendered is uncertain, it shall, if either of the parties request it, be assessed by a jury.

1 U.S.Stat. 87. *Farrar v. U. S.*, 5 Pet. 373.

§ 962. Judgment for duties, etc.—In all suits by the United States for the recovery of duties upon imports, or of penalties for the non-payment thereof, the judgment shall recite that it is rendered for duties, and such judgment, with interest thereon, and costs, shall be payable in the coin by law receivable for duties; and the execution issued thereon shall set forth that the recovery is for duties, and shall require the marshal to satisfy the same in the coin by law receivable for duties; and in case of levy upon and sale of the property of the judgment debtor, the marshal shall refuse payment from any purchaser at such sale in any other money than that specified in the execution. [See § 3014.]

13 U.S.Stat. 494.

§ 963. Interest on bonds for duties.—Upon all bonds, on which suits are brought for the recovery of duties, interest shall be allowed, at the rate of six per centum a year, from the time when said bonds became due.

1 U.S.Stat. 676.

§ 964. Interest on balances due Post-Office Department.—In all suits for balances due to the Post-Office Department, interest thereon shall be recovered, from the time of the default, at the rate of six per centum a year.

5 U.S.Stat. 82.

§ 965. Interest on debentures.—In suits upon debentures, issued by the collectors of the customs under any act for the collection of duties, interest shall be allowed, at the rate of six per centum per annum, from the time when such debenture became due and payable.

1 U.S.Stat. 687, 689.

§ 966. Interest on judgments.—Interest shall be allowed on all judgments in civil causes, recovered in a circuit or district court, and may be levied by the marshal under process of execution issued thereon, in all cases where, by the law of the State in which such court is held, interest may be levied under process of execution on judg-

ments recovered in the courts of such State; and it shall be calculated from the date of the judgment, at such rate as is allowed by law on judgments recovered in the courts of such State.

5 U.S.Stat. 518. *Perkins v. Fourniquet*, 14 How. 328.

§ 967. When judgments of United States courts cease to be liens.—Judgments and decrees rendered in a circuit or district court, within any State, shall cease to be liens on real estate or chattels real, in the same manner and at like periods as judgments and decrees of the courts of such State cease, by law, to be liens thereon.

5 U.S.Stat. 393. *Massingill v. Downs*, 7 How. 760.

§ 968. No costs on recovery of less than \$500.—When, in a circuit court, a plaintiff in an action at law originally brought there, or a petitioner in equity, other than the United States, recovers less than the sum or value of five hundred dollars, exclusive of costs, in a case which cannot be brought there unless the amount in dispute, exclusive of costs, exceeds said sum or value; or a libellant, upon his own appeal, recovers less than the sum or value of three hundred dollars, exclusive of costs, he shall not be allowed, but, at the discretion of the court, may be adjudged to pay, costs.

1 U.S.Stat. 83; 2 id. 244. *Leeds v. Cameron*, 3 Sum. 488; *Kneass v. Schnykill Bank*, 4 Wash. C. C. 106; *Cottle v. Payne*, 3 Day 289; *Ellis v. Jarvis*, 3 Mas. 457; *Field v. Schell*, 4 Blatch. 436.

§ 969. Costs in internal revenue suits upon information.—When a suit for the recovery of any penalty or forfeiture accruing under any law providing internal revenue is brought upon information received from any person other than a collector, deputy collector, or inspector of internal revenue, the United States shall not be subject to any costs of suit.

14 U.S.Stat. 111.

§ 970. Claimant not entitled to costs when reasonable cause of seizure.—When, in any prosecution commenced on account of the seizure of any vessel, goods, wares, or merchandise, made by any collector or other officer, under any act of Congress authorizing such seizure, judgment is rendered for the claimant, but it appears to the court that there was reasonable cause of seizure, the court shall cause a proper certificate thereof to be entered,

and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution: *Provided*, That the vessel, goods, wares, or merchandise be, after judgment, forthwith returned to such claimant or his agent.

2 U.S.Stat. 422; 1 id. 695, 696. U. S. v. Riddle, 5 Cranch 311; Locke v. U. S., 7 Cranch 339; Otis v. Watkins, 9 Cranch 339; Gelston v. Hoyt, 3 Wheat. 314; The Apollon, 9 Wheat. 362; Averill v. Smith, 17 Wall. 93; The Friendship, 1 Gallis. 112; U. S. v. Gay, 2 Gallis. 360; U. S. v. The Ship Recorder, 2 Blatch. 120; La Jeune Eugenie, 2 Mason 436.

§ 971. Double costs, when plaintiff is nonsuited in action against officer making seizure, etc.—If, in any suit against an officer or other person executing or aiding or assisting in the seizure of goods, under any act providing for or regulating the collection of duties on imports or tonnage, the plaintiff is nonsuited, or judgment passed against him, the defendant shall recover double costs.

1 U.S.Stat. 678.

§ 972. In copyright suits, costs.—In all recoveries under the copyright laws, either for damages, forfeitures, or penalties, full costs shall be allowed thereon.

16 U.S.Stat. 215.

§ 973. Costs, infringement of patent.—When judgment or decree is rendered for the plaintiff or complainant, in any suit at law or in equity, for the infringement of a part of a patent, in which it appears that the patentee, in his specification, claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor, no costs shall be recovered, unless the proper disclaimer, as provided by the patent-laws, has been entered at the Patent-Office before the suit was brought.

16 U.S.Stat. 207.

§ 974. When costs of prosecution to be paid by defendant.—When judgment is rendered against the defendant in a prosecution for any fine or forfeiture incurred under a statute of the United States, he shall be subject to the payment of costs; and on every conviction for any other offense not capital, the court may, in its discretion, award that the defendant shall pay the costs of the prosecution.

1 U.S.Stat. 277.

§ 975. When costs are recovered by defendant in a prosecution.—If any informer or plaintiff on a penal statute, to whom the penalty or any part thereof, if recovered, is directed to accrue, discontinues his suit or prosecution, or is nonsuited therein, or if upon trial judgment is rendered in favor of the defendant, the court shall award to the defendant his costs, unless such informer or plaintiff is an officer of the United States specially authorized to commence such prosecution, and the court, at the trial in open court, certifies upon the record that there was reasonable cause for commencing the same; in which case no costs shall be adjudged to the defendant.

1 U.S.Stat. 277.

§ 976. Fees of clerk, marshal, etc., by whom payable.—If any informer on a penal statute, to whom the penalty or any part thereof, if recovered, is directed to accrue, discontinues his suit or prosecution, or is nonsuited therein, or if upon trial judgment is rendered in favor of the defendant, such informer shall be alone liable to the clerk, marshal, and attorney for the fees of such prosecution, unless he is an officer of the United States whose duty it is to commence such prosecution, and the court certifies that there was reasonable cause for commencing the same; in which case the United States shall be responsible for such fees.

1 U.S.Stat. 626.

§ 977. Costs, nonjoinder of action.—If several actions or processes are instituted, in a court of the United States or one of the Territories, against persons who might legally be joined in one action or process touching the matter in dispute, the party pursuing the same shall not recover, on all of the judgments therein which may be rendered in his favor, the costs of more than one action or process, unless special cause for said several actions or processes is satisfactorily shown on motion in open court.

3 U.S.Stat. 19.

§ 978. Costs in libels against vessel and cargo.—When proceedings are had before a court of the United States or of the Territories, on several libels against any vessel and cargo, which might legally be joined in one libel, there shall not be allowed thereon more costs than

on one libel, unless special cause for libeling the vessel and cargo separately is satisfactorily shown on motion in open court. And in proceedings on several libels or informations against any cargo, or parts of cargo, or merchandise seized as forfeited for the same cause, there shall not be allowed more costs than would be lawful on one libel or information, whatever may be the number of owners of consignees therein concerned. But allowance may be made on one libel or information for the costs incidental to several claims.

3 U.S.Stat. 20.

§ 979. Claimant's costs to be paid before possession, when, etc.—When judgment is rendered in favor of the claimant of any vessel or other property seized on behalf of the United States, and libeled or informed against as forfeited under any law thereof, he shall be entitled to possession of the same when his own costs are paid.

3 U.S.Stat. 21.

§ 980. District attorney's costs.—When a district attorney prosecutes two or more indictments, suits, or proceedings which should be joined, he shall be paid but one bill of costs for all of them.

10 U.S.Stat. 162.

§ 981. Taxation of fees of witness before a commissioner.—In no case shall the fees of more than four witnesses be taxed against the United States, in the examination of any criminal case before a commissioner of a circuit court, unless their materiality and importance are first approved and certified to by the district attorney for the district in which the examination is had; and such taxation shall be subject to revision, as in other cases.

11 U.S.Stat. 49.

§ 982. Attorney liable for costs vexatiously increased by him.—If any attorney, proctor, or other person admitted to conduct causes in any court of the United States, or of any Territory, appears to have multiplied the proceedings in any cause before such court, so as to increase costs unreasonably and vexatiously, he shall be required, by order of the court, to satisfy any excess of costs so increased.

10 U.S.Stat. 162; 3 id. 21.

§ 983. Bill of costs, how taxed.—The bill of fees of the clerk, marshal, and attorney, and the amount paid printers and witnesses, and lawful fees for exemplifications and copies of papers necessarily obtained for use on trials in cases where by law costs are recoverable in favor of the prevailing party, shall be taxed by a judge or clerk of the court, and be included in and form a portion of a judgment or decree against the losing party. Such taxed bills shall be filed with the papers in the cause.

10 U.S.Stat. 168. *The Liverpool Packet*, 2 Sprague 37; *Lyell v. Miller*, 6 McLean 422.

§ 984. Bill of costs to be sworn to.—Before any bill of costs shall be taxed by any judge or other officer, or allowed by any officer of the Treasury, in favor of clerks, marshals, commissioners, or district attorneys, the party claiming such bill shall prove by his own oath, or that of some other person having a knowledge of the facts, to be attached to such bill, and filed therewith, that the services charged therein have been actually and necessarily performed, as therein stated.

10 U.S.Stat. 169.

§ 985. Executions to run in all the districts of the State.—All writs of execution upon judgments or decrees obtained in a circuit or district court, in any State which is divided into two or more districts, may run and be executed in any part of such State; but shall be issued from, and made returnable to, the court wherein the judgment was obtained.

4 U.S.Stat. 184.

§ 986. Executions in favor of U. S. to run in every State.—All writs of execution upon judgments obtained for the use of the United States, in any court thereof, in one State, may run and be executed in any other State, or in any Territory, but shall be issued from, and made returnable to, the court wherein the judgment was obtained.

1 U.S.Stat. 515; *Lyman V. & R. Co. v. Southard*, 12 Blatchf. 405.

§ 987. Execution stayed on conditions.—When a circuit court enters judgment in a civil action, either upon a verdict or on a finding of the court upon the facts, in cases where such finding is allowed, execution may, on motion of either party, at the discretion of the court, and on such conditions for the security of the adverse party as

it may judge proper, be stayed forty-two days from the time of entering judgment, to give time to file in the clerk's office of said court a petition for a new trial. If such petition is filed within said term of forty-two days, with a certificate thereon from any judge of such court that he allows it to be filed, which certificate he may make or refuse at his discretion, execution shall, of course, be further stayed to the next session of said court. If a new trial be granted, the former judgment shall be thereby rendered void.

1 U.S.Stat. 83; 13 *Id.* 501.

§ 988. Judgment-debtor, continuance.—In any State where judgments are liens upon the property of the defendant, and where, by the laws of such State, defendants are entitled, in the courts thereof, to a stay of execution for one term or more, defendants in actions in the courts of the United States, held therein, shall be entitled to a stay of execution for one term.

4 U.S.Stat. 281.

§ 989. Execution against officers of revenue.—When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him, and by him paid into the Treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury.

12 U.S.Stat. 741; *Andrae v. Redfield*, 12 *Blatchf.* 417.

§ 990. Imprisonment for debt.—No person shall be imprisoned for debt in any State, on process issuing from a court of the United States, where, by the laws of such State, imprisonment for debt has been or shall be abolished. And all modifications, conditions, and restrictions upon imprisonment for debt, provided by the laws of any State, shall be applicable to the process issuing from the courts of the United States to be executed therein; and the same course of proceedings shall be adopted therein as may be adopted in the courts of such State.

5 U.S.Stat. 321; 5 id. 410; 14 id. 543. *Randolph v. Donaldson*, 9 Cranch 76; *Marshall v. Bazin*, 7 N. Y. Leg. Obs. 342; *Hodge v. Bemis*, 12 Law Reporter 470; *Gardner v. Isaacson*, Ab. Adm. 141; *Gaines v. Travis*, Ab. Adm. 422.

§ 991. Discharge from arrest or imprisonment.—When any person is arrested or imprisoned in any State, on mesne process or execution issued from any court of the United States, in any civil action, he shall be entitled to discharge from such arrest or imprisonment in the same manner as if he were so arrested and imprisoned on like process from the courts of such State. The same oath may be taken, and the same notice thereof shall be required, as may be provided by the laws of such State, and the same course of proceedings shall be adopted as may be adopted in the courts thereof. But all such proceedings shall be had before any one of the commissioners of the circuit court for the district where the defendant is so held.

14 U.S.Stat. 543; 2 id. 5; 4 id. 1; 4 id. 19, 20. *King v. Riddle*, 7 Cranch 168; *Duncan v. Darst*, 1 How. 301; *McNutt v. Bland*, 2 How. 9; *Snead v. McCoull*, 12 How. 407.

§ 992. Privileges of jail limits.—Persons imprisoned on process issuing from any court of the United States in civil actions, as well at the suit of the United States as at the suit of any person, shall be entitled to the same privileges of the yards of the respective jails as persons confined in like cases on process from the courts of the respective States are entitled to, and under the like regulations and restrictions.

2 U.S.Stat. 4; 4 id. 278; 5 id. 499. *Ex parte Wilson*, 6 Cranch 52; *U. S. v. Knight*, 14 Pet. 314.

§ 993. Goods taken on a fieri facias, how appraised.—When it is required by the laws of any State that goods taken in execution on a writ of fieri facias shall be appraised, before the sale thereof, the appraisers appointed under the authority of the State may appraise goods taken in execution on a fieri facias issued out of any court of the United States, in the same manner as if such writ had issued out of a court of such State. And the marshal in whose custody such goods may be shall summon the appraisers, in the same manner as the sheriff is, by the laws of such State, required to summon them; and if the appraisers, being duly summoned, fail to attend and perform the duties required of them, the marshal may

proceed to sell such goods without an appraisement. When such appraisers attend they shall be entitled to the like fees as in cases of appraisements under the laws of the State.

1 U.S.Stat. 335. *Bronson v. Kinzie*, 1 How. 323.

§ 994. Death of marshal after levy or sale.—When a marshal dies, or is removed from office, or the term of his commission expires, after he has taken in execution, under process from a court of the United States, any lands, tenements, or hereditaments, and before sale or other final disposition thereof, the like process shall issue to the succeeding marshal, and the same proceeding shall be had as if such marshal had not died or been removed, or the term of his commission had not expired. And when a marshal dies or is removed from office, or the term of his commission expires, after he has sold any lands, tenements, or hereditaments, under process from a court of the United States, and before a deed for the same is executed by him to the purchaser, such court may, on application by the purchaser, or by the plaintiff at whose suit the sale was made, setting forth the case and the reason why the title was not perfected by said marshal, order the marshal for the time being to perfect the title and execute a deed to the purchaser, upon his paying the purchase-money and costs remaining unpaid.

2 U.S.Stat. 61. *Doolittle v. Bryan*, 14 How. 563.

§ 995. Moneys paid into court.—All moneys paid into any court of the United States, or received by the officers thereof, in any cause pending or adjudicated in such court, shall be forthwith deposited with the Treasurer, an assistant treasurer, or a designated depository of the United States, in the name and to the credit of such court: *Provided*, That nothing herein shall be construed to prevent the delivery of any such money upon security according to agreement of parties, under the direction of the court.

17 U.S.Stat. 1.

§ 996. Moneys deposited, how withdrawn.—No money deposited as aforesaid shall be withdrawn except by order of the judge or judges of said courts respectively, in term or in vacation, to be signed by such judge or judges, and to be entered and certified of record by the

clerk; and every such order shall state the cause in or on account of which it is drawn.

17 U.S.Stat. 1.

PROCEDURE ON ERROR AND APPEAL.

SECTION 997. Removal of causes by writ of error.

- 998. Citation.
- 999. Citation; Supreme Court.
- 1000. Bond in error and on appeal.
- 1001. No bond required of United States, etc.
- 1002. Writs of error to district courts acting as circuit courts.
- 1003. Writs of error to State courts, manner of issue.
- 1004. Writs of error returnable to the Supreme Court, how issued.
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- 1009. Appeals in prize causes, within what time.
- 1010. Damages and costs on affirmance in error.
- 1011. Reversal on error limited.
- 1012. Appeals from circuit courts to Supreme Court.
- 1013. Where both parties appeal to the Supreme Court, one record sufficient.

§ 997. Removal of causes by writ of error.—There shall be annexed to and returned with any writ of error for the removal of a cause, at the day and place herein mentioned, an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party.

1 U.S.Stat. 84; 14 id. 386.

Writ of error, diligence, *Wood v. Lide*, 4 Cranch 180; *Brooks v. Norris*, 11 How. 204; *Insurance Co. v. Mordecai*, 21 How. 200; *Overton v. Cheek*, 22 How. 46; *Mussina v. Cavazos*, 6 Wall. 355; *Bartemeyer v. Iowa*, 14 Wall. 26. Appeal, diligence, *U. S. v. Villabolas*, 6 How. 81; *U. S. v. Curry*, id. 112; *Steamer Virginia v. West*, 19 How. 182; *Castro v. U. S.*, 3 Wall. 46.

Transcript, what not necessary, *Owens v. Hanney*, 9 Cranch 180; *Williams v. Norris*, 12 Wheat. 117. When to be filed, *Steamer Virginia v. West*, 19 How. 182; *Castro v. U. S.*, 3 Wall. 46; *Sparrow v. Strong*, 3 Wall. 103; *U. S. v. Gomez*, 3 Wall. 752; *The Lucy*, 8 Wall. 307; *U. S. v. Vigil*, 10 Wall. 423. Certificate to, *McDonogh v. Mil- laudon*, 3 How. 693; *U. S. v. Gomez*, 1 Wall. 690; *Blitz v. Brown*, 7 Wall. 693. Record, sufficiency of, *Stockton v. Bishop*, 4 How. 155. What no part of, *Innerarity v. Byrne*, 5 How. 295; *Genes v. Bon- namer*, 7 Wall. 564; *Avendano v. Gay*, 8 Wall. 376. Deficiencies in,

how supplied, *Stearns v. U. S.*, 4 Wall. 1; *Edmonson v. Bloomshire*, 7 Wall. 306; *Hoe v. Wilson*, 9 Wall. 501; *Hodges v. Vaughan*, 19 Wall. 12; *The Rio Grande*, id. 178; *Maxwell v. Stewart*, 21 Wall. 71.

Citation, must accompany writ, *Lloyd v. Alexander*, 1 Cranch 365; *Yeaton v. Lenox*, 7 Pet. 220. By whom to be signed, *U. S. v. Hodge*, 3 How. 534; *McDonogh v. Millaudon*, 3 How. 693; *Sheppard v. Wilson*, 5 How. 210; *Villabolas v. U. S.*, 6 How. 81; *Palmer v. Donner*, 7 Wall. 541; *Bartemeyer v. Iowa*, 14 Wall. 26. To whom issued, *Davenport v. Fletcher*, 16 How. 142; *Poydras de la Lande v. Treasurer*, 17 How. 1; *Bigler v. Waller*, 12 Wall. 142. Issuance, proof of, *Innerarity v. Byrne*, 5 How. 295. Service and return of, *U. S. v. Curry*, 6 How. 106; *Buckingham v. McLean*, 13 How. 150; *Bacon v. Hart*, 1 Black 38; *Castro v. U. S.*, 3 Wall. 46; *Sparrow v. Strong*, 3 Wall. 103; *Alviso v. U. S.*, 6 Wall. 457; *City of Washington v. Denison*, id. 495. Waiver by appearance, *Carroll v. Dorsey*, 20 How. 207; *Alviso v. U. S.*, 5 Wall. 824; *Pierce v. Cox*, 9 Wall. 787. Service on substituted parties, *McClane v. Boon*, 6 Wall. 244. When issuance not necessary, *U. S. v. Gomez*, 1 Wall. 690. Immaterial errors in, *Peale v. Phipps*, 8 How. 256. Variance from writ, effect of, *Kail v. Wetmore*, 6 Wall. 451; *McVeigh v. U. S.*, 8 Wall. 640.

§ 998. Citation.—When the writ is issued by a circuit court to a district court, the citation shall be signed by the judge of such district court, or by the circuit judge of such circuit court, or by a justice of the Supreme Court, and the adverse party shall have at least twenty days' notice.

1 U.S.Stat. 84; 14 id. 386.

§ 999. Citation, Supreme Court.—When the writ is issued by the Supreme Court to a circuit court, the citation shall be signed by a judge of such circuit court or by a justice of the Supreme Court, and the adverse party shall have at least thirty days' notice; and when it is issued by the Supreme Court to a State court, the citation shall be signed by the Chief Justice, or judge, or chancellor of such court, rendering the judgment or passing the decree complained of, or by a justice of the Supreme Court of the United States, and the adverse party shall have at least thirty days' notice.

1 U.S.Stat. 84; 14 id. 386. *U. S. v. Hodge*, 3 How. 534; *Sheppard v. Wilson*, 5 How. 210; *Villabolas v. U. S.*, 6 How. 81; *Davidson v. Lanier*, 4 Wall. 447; *Palmer v. Donner*, 7 Wall. 541; *Bartemeyer v. Iowa*, 14 Wall. 26.

§ 1000. Bond in error and on appeal.—Every justice or judge signing a citation on any writ of error, shall, except in cases brought up by the United States or by direction of any Department of the Government, take good and sufficient security that the plaintiff in error or the ap-

pellant shall prosecute his writ or appeal to effect, and, if he fail to make his plea good, shall answer all damages and costs, where the writ is a supersedeas and stays execution, or all costs only where it is not a supersedeas as aforesaid.

1 U.S.Stat. 84; 1 id. 404; 12 id. 657; 15 id. 226.

To whom given, *Davenport v. Fletcher*, 16 How. 142. Approval of, *Hudgins v. Kemp*, 18 How. 530; *Anson v. Blue Ridge R. R. Co.*, 23 id. 1; *Davidson v. Lanier*, 4 Wall. 453; *Ex parte Milwaukee R. R. Co.*, 5 id. 188; *Silver v. Ladd*, 6 id. 440. Sufficiency of, *Rubber Co. v. Good-year*, 6 Wall. 153. By several parties, *Brockett v. Brockett*, 2 How. 238. Sufficiency of security, *French v. Shoemaker*, 12 Wall. 86; *Bigler v. Waller*, 12 id. 142. Enlarging security, *Roberts v. Cooper*, 19 How. 373. For costs, operation of, *Orchard v. Hughes*, 1 Wall. 76. Failure to file bond, *Seymour v. Freer*, 5 Wall. 822; *Edmonson v. Bloomshire*, 7 id. 306. Entry nunc pro tunc, *Brobst v. Brobst*, 2 Wall. 96.

§ 1001. No bond required of United States. — Whenever a writ of error, appeal, or other process in law, admiralty, or equity, issues from or is brought up to the Supreme Court, or a circuit court, either by the United States or by direction of any Department of the Government, no bond, obligation, or security shall be required from the United States, or from any party acting under the direction aforesaid, either to prosecute said suit, or to answer in damages or costs. In case of an adverse decision, such costs as by law are taxable against the United States, or against the party acting by direction as aforesaid, shall be paid out of the contingent fund of the Department under whose directions the proceedings were instituted.

12 U.S.Stat. 657; 15 id. 226.

§ 1002. Writs of error to district courts acting as circuit courts. — Writs of error shall be prosecuted from the final judgments of district courts acting as circuit courts to the Supreme Court in the same manner as from the final judgments of circuit courts.

1 U.S.Stat. 77. Ala. 5 U.S.Stat. 504; 9 id. 78. Ark. 9 U.S.Stat. 505. Ga. 9 U.S.Stat. 281. Miss. 5 U.S.Stat. 317. W. Va. 3 U.S.Stat. 479; 5 id. 177; 5 id. 215; 13 id. 124.

§ 1003. Writs of error to State courts. — Writs of error from the Supreme Court to a State court, in cases authorized by law, shall be issued in the same manner, and under the same regulations, and shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a court of the United States.

1 U.S.Stat. 85; 14 id. 386. *Gelston v. Hoyt*, 3 Wheat. 246; *Buel v. Van Ness*, 8 id. 312; *McGuire v. The Commonwealth*, 3 Wall. 382; *Green v. Van Buskerk*, id. 448; *Palmer v. Donner*, 7 Wall. 541; *Aldrich v. Aetna Co.*, 8 Wall. 495; *Gleason v. Florida*, 9 Wall. 779; *Bartmeyer v. Iowa*, 14 Wall. 26.

§ 1004. Writs of error returnable to the Supreme Court.—Writs of error returnable to the Supreme Court may be issued as well by the clerks of the circuit courts, under the seals thereof, as by the clerk of the Supreme Court. When so issued they shall be, as nearly as each case may admit, agreeable to the form of a writ of error transmitted to the clerks of the several circuit courts by the clerk of the Supreme Court, in pursuance of section nine of the act of May eight, seventeen hundred and ninety-two, chapter thirty-six.

1 U.S.Stat. 278. *Buel v. Van Ness*, 8 Wheat. 312; *Sheppard v. Wilson*, 5 How. 210; *Mussina v. Cavazos*, 6 Wall. 355.

§ 1005. Amendment of writ of error.—The Supreme Court may, at any time, in its discretion and upon such terms as it may deem just, allow an amendment of a writ of error, when there is a mistake in the teste of the writ, or a seal to the writ is wanting, or when the writ is made returnable on a day other than the day of the commencement of the term next ensuing the issue of the writ, or when the statement of the title of the action or parties thereto in the writ is defective, if the defect can be remedied by reference to the accompanying record, and in all other particulars of form: *Provided*, The defect has not prejudiced, and the amendment will not injure, the defendant in error.

17 U.S.Stat. 196. *Carroll v. Dorsey*, 20 How. 206; *Mussina v. Cavazos*, 6 Wall. 355; *Hampton v. Rouse*, 15 id. 684. See 2 Cent. L. J. 60.

§ 1006. Amendments in prize appeals.—The Supreme Court may, if, in its judgment, the purposes of justice require it, allow any amendment, either in form or substance, of any appeal in prize causes. [See § 4636.]

17 U.S.Stat. 556.

§ 1007. Supersedeas.—In any case where a writ of error may be a supersedeas, the defendant may obtain such supersedeas by serving the writ of error, by lodging a copy thereof for the adverse party in the clerk's office where the record remains, within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and

giving the security required by law on the issuing of the citation. But if he desires to stay process on the judgment, he may, having served his writ of error as aforesaid, give the security required by law within sixty days after the rendition of such judgment, or afterward with the permission of a justice or judge of the appellate court. And in such cases where a writ of error may be a supersedeas, executions shall not issue until the expiration of ten days.
 *as amended by act of Feb. 18th, 1875.

1 U.S.Stat. 85; 17 id. 198. *Hogan v. Ross*, 11 How. 294; *Stafford v. Union Bank*, 16 id. 135; *Adams v. Law*, 16 id. 144; *Hudgins v. Kemp*, 18 id. 531; *Green v. Van Buskerk*, 3 Wall. 448; *Ex parte Milwaukee R. Co.*, 5 id. 188; *City of Washington v. Dennison*, 6 id. 495; *Railroad Co. v. Harris*, 7 id. 574; *French v. Shoemaker*, 12 id. 86; *Bigler v. Waller*, id. 142; *Telegraph Co. v. Eyser*, 19 id. 419; *Board of Commissioners v. Gorman*, id. 661.

§ 1008. Writs of error and appeals to Supreme Court, time for taking.—No judgment, decree, or order of a circuit or district court, in any civil action, at law or in equity, shall be reviewed in the Supreme Court, on writ of error or appeal, unless the writ of error is brought, or the appeal is taken, within two years after the entry of such judgment, decree, or order: *Provided*, That where a party entitled to prosecute a writ of error or to take an appeal is an infant, insane person, or imprisoned, such writ of error may be prosecuted, or such appeal may be taken, within two years after the judgment, decree, or order, exclusive of the term of such disability. [See § 635.]

17 U.S.Stat. 196. *Thomas v. Brockenborough*, 10 Wheat. 146; *Brooks v. Norris*, 11 How. 204; *Hanger v. Abbott*, 6 Wall. 532; *The Protector*, 9 Wall. 687.

§ 1009. Appeals in prize causes, within what time.—Appeals in prize causes shall be made within thirty days after the rendering of the decree appealed from, unless the court previously extends the time, for cause shown in the particular case: *Provided*, That the Supreme Court may, if in its judgment the purposes of justice require it, allow an appeal in any prize cause, if it appears that any notice of appeal, or of intention to appeal, was filed with the clerk of the district court within thirty days next after the rendition of the final decree therein. [See §§ 695, 4636.]

13 U.S.Stat. 310; 17 id. 556. *The Neustra Señora de Regla*, 17 Wall. 29.

§ 1010. Damages and costs on affirmance in error.—Where, upon a writ of error, judgment is affirmed in the

Supreme Court or a circuit court, the court shall adjudge to the respondents in error just damages for his delay, and single or double costs, at its discretion.

1 U.S.Stat. 85; 2 id. 244; 14 id. 386. Supreme Court rules, 23, 24, 30; Winchester v. Jackson, 3 Cranch, 514; Himley v. Rose, 5 id. 313; McIver v. Wattles, 9 Wheat. 660; Boyce v. Grumdy, 9 Pet. 275; Kilbourne v. State Savings Inst., 22 How. 503; Hennessy v. Sheldon, 12 Wall. 440.

§ 1011. Reversal on error limited.—There shall be no reversal in the Supreme Court or in a circuit court upon a writ of error, for error in ruling any (a) plea in abatement, other than a plea to the jurisdiction of the court, or for any error in fact.

1 U.S.Stat. 84; 2 id. 244. Stafford v. Union Bank. 16 How. 135.

§ 1012. Appeals from circuit courts to Supreme Court.—Appeals from the circuit courts and district courts acting as circuit courts, and from district courts in prize causes, shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error.

2 U.S.Stat. 244; 13 id. 310. Yeaton v. Lenox, 7 Pet. 220; Villabolas v. U. S., 6 How. 81; U. S. v. Curry, 6 id. 106; Stafford v. Union Bank, 16 id. 139; Steamer Virginia v. West, 19 id. 182; U. S. v. Gomez, 3 Wall. 763; The Protector, 11 id. 82.

§ 1013. Where both parties appeal to the Supreme Court, one record sufficient.—Where appeal is duly taken by both parties from the judgment or decree of a circuit or district court to the Supreme Court, a transcript of the record filed in the Supreme Court by either appellant may be used on both appeals, and both shall be heard thereon in the same manner as if records had been filed by the appellants in both cases.

12 U.S.Stat. 319.

CRIMINAL PROCEDURE.

SECTION 1014. Offenders against the United States, how arrested and how removed for trial.

1015. Bail shall be admitted in cases not capital; by whom.

1016. Bail may be admitted in capital cases; by whom.

1017. Bail in criminal cases removed by writ of error from State courts.

1018. Surrender of criminals by their bail.

(a) So corrected by act of Feb. 18th, 1875.

- SECTION** 1019. New bail to be given in certain cases.
 1020. When penalty of recognizances may be remitted.
 1021. Indictments and presentments to be by at least twelve grand jurors.
 1022. Offenses against the elective franchise, how prosecuted.
 1023. Matters set forth in prosecutions for perjury before a naval court-martial.
 1024. Charges which may be joined in one indictment shall be so joined.
 1025. Indictments, defects of form.
 1026. Judgment on demurrer to an indictment.
 1027. When several indictments against the same person, one writ sufficient.
 1028. Copy of writ to be jailer's authority; original returned.
 1029. Writ for removal of a prisoner from one district to another.
 1030. No writ necessary to bring into court a person in custody.
 1031. When peremptory challenges exceed the number allowed by law.
 1032. Prisoner standing mute, etc.
 1033. Copy of indictment and list of jurors and witnesses to be delivered to prisoner in capital cases.
 1034. Persons indicted for capital crimes entitled to counsel and to compel witnesses.
 1035. Verdict of less offense than charged.
 1036. Verdict against part of several joint defendants.
 1037. Indictments remitted by circuit and district courts to each other.
 1038. Remission from district to circuit court of difficult cases.
 1039. All capital cases remitted from district to circuit courts.
 1040. When a capital case is carried to the Supreme Court, execution postponed.
 1041. Judgments for fines, how collected.
 1042. Poor convicts sentenced and imprisoned for fines.

§ 1014. Offenders against the U. S., how arrested and removed for trial.—For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cog-

nizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had. [See § 879.]

1 U.S.Stat. 91; 1 id. 334; 5 id. 516.

§ 1015. Bail admitted in cases not capital.—Bail shall be admitted upon all arrests in criminal cases where the offense is not punishable by death; and in such cases it may be taken by any of the persons authorized by the preceding section to arrest and imprison offenders.

1 U.S.Stat. 91; 1 id. 334; 16 id. 44.

§ 1016. Bail admitted in capital cases.—Bail may be admitted upon all arrests in criminal cases where the punishment may be death; but in such cases it shall be taken only by the Supreme Court or a circuit court, or by a justice of the Supreme Court, a circuit judge, or a judge of a district court, who shall exercise their discretion therein, having regard to the nature and circumstance of the offense, and of the evidence, and to the usages of law.

1 U.S.Stat. 91; 1 id. 334; 16 id. 44.

§ 1017. Bail in criminal cases removed from State courts.—When a writ of error is issued for the revision of the judgment of a State court, in any criminal proceeding where is drawn in question the validity of a statute of, or an authority exercised under, the United States, or where any title, right, privilege, or immunity is claimed under the Constitution, or any statute of, or commission held or authority exercised under, the United States, the defendant, if charged with an offense that is bailable by the laws of such State, shall not be released from custody until a final judgment upon such writ, or until a bond, with sufficient sureties, in a reasonable sum, as ordered and approved by the State court, is given; and if the offense is not so bailable, until a final judgment upon the writ of error. [See § 709.]

14 U.S.Stat. 172; 1 id. 85; 14 id. 386.

§ 1018. Surrender of criminals by their bail.—Any party charged with a criminal offense and admitted to bail may, in vacation, be arrested by his bail, and delivered to the marshal or his deputy, before any judge or other officer having power to commit for such offense; and at the request of such bail, the judge or other officer shall recommit the party so arrested to the custody of the marshal, and indorse on the recognizance, or certified copy thereof, the discharge and exoneratur of such bail; and the party so committed shall therefrom be held in custody until discharged by due course of law.

9 U.S.Stat. 73.

§ 1019. New bail to be given in certain cases.—When proof is made to any judge of the United States, or other magistrate having authority to commit on criminal charges as aforesaid, that a person previously admitted to bail on any such charge is about to abscond, and that his bail is insufficient, the judge or magistrate shall require such person to give better security, or, for default thereof, cause him to be committed to prison; and an order for his arrest may be indorsed on the former commitment, or a new warrant therefor may be issued, by such judge or magistrate, setting forth the cause thereof.

9 U.S.Stat. 73.

§ 1020. When penalty of recognizances may be remitted.—When any recognizance in a criminal cause, taken for, or in, or returnable to, any court of the United States, is forfeited by a breach of the condition thereof, such court may, in its discretion, remit the whole or a part of the penalty, whenever it appears to the court that there has been no willful default of the party, and that a trial can, notwithstanding, be had in the cause, and that public justice does not otherwise require the same penalty to be enforced.

5 U.S.Stat. 322; U.S. v. Stricker, 12 Blatchf. 389.

§ 1021. Indictments.—No indictment shall be found, nor shall any presentment be made, without the concurrence of at least twelve grand jurors.

13 U.S.Stat. 500.

§ 1022. Offenses against the elective franchise.—All crimes and offenses committed against the provisions

of chapter seven, Title "Crimes," which are not infamous, may be prosecuted either by indictment or by information filed by a district attorney.

16 U.S.Stat. 142.

§ 1023. Perjury before a court-martial.—In prosecutions for perjury committed on examination before a naval general court-martial, or for the subornation thereof, it shall be sufficient to set forth the offense charged on the defendant, without setting forth the authority by which the court was held, or the particular matters brought before, or intended to be brought before, said court.

12 U.S.Stat. 604.

§ 1024. Charges joined in one indictment.—When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases. the court may order them to be consolidated.

10 U.S.Stat. 162; U.S. v. Jacoby, 12 Blatchf. 491.

§ 1025. Indictments, defects of form.—No indictment found and presented by a grand jury in any district or circuit or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant.

17 U.S.Stat. 198.

§ 1026. Judgment on demurrer to an indictment.—In every case in any court of the United States, where a demurrer is interposed to an indictment, or to any count or counts thereof, or to any information, and the demurrer is overruled, the judgment shall be respondeat ouster; and thereupon a trial may be ordered at the same term, or a continuance may be ordered, as justice may require.

17 U.S.Stat. 158.

§ 1027. Several indictments against the same person, one writ sufficient.—When two or more charg-

as are made, or two or more indictments are found against any person, only one writ or warrant shall be necessary to commit him for trial; and it shall be sufficient to state in the writ the name or general character of the offenses, or to refer to them only in very general terms.

10 U.S.Stat. 162.

§ 1028. Copy of writ to be jailer's authority.—Whenever a prisoner is committed to a sheriff or jailer by virtue of a writ, warrant, or mittimus, a copy thereof shall be delivered to such sheriff or jailer as his authority to hold the prisoner, and the original writ, warrant, or mittimus shall be returned to the proper court or officer, with the officer's return thereon.

10 U.S.Stat. 163.

§ 1029. Writ for removal of a prisoner from one district to another.—Only one writ or warrant is necessary to remove a prisoner from one district to another. One copy thereof may be delivered to the sheriff or jailer from whose custody the prisoner is taken, and another to the sheriff or jailer to whose custody he is committed, and the original writ, with the marshal's return thereon, shall be returned to the clerk of the district to which he is removed.

10 U.S.Stat. 162, 163.

§ 1030. No writ necessary to bring into court a person in custody.—No writ is necessary to bring into court any prisoner or person in custody, or for remanding him from the court into custody; but the same shall be done on the order of the court or district attorney, for which no fees shall be charged by the clerk or marshal.

10 U.S.Stat. 169.

§ 1031. Peremptory challenges.—If, in the trial of a capital offense, the party indicted peremptorily challenges jurors above the number allowed him by law, such excess of challenges shall be disallowed by the court, and the cause shall proceed for trial in the same manner as if they had not been made. [See § 819.]

4 U.S.Stat. 777; 13 id. 500.

§ 1032. Prisoners standing mute, etc.—When any person indicted for any offense against the United States, whether capital or otherwise, upon his arraignment stands

mute, or refuses to plead or answer thereto, it shall be the duty of the court to enter the plea of not guilty on his behalf, in the same manner as if he had pleaded not guilty thereto. And when the party pleads not guilty, or such plea is entered as aforesaid, the cause shall be deemed at issue, and shall, without further form or ceremony, be tried by a jury.

4 U.S.Stat. 777; 1 id. 119; 4 id. 118.

§ 1033. Copy of indictment, etc., delivered to prisoner.—When any person is indicted of treason, a copy of the indictment and a list of the jury, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each juror and witness, shall be delivered to him at least three entire days before he is tried for the same. When any person is indicted of any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial.

1 U.S.Stat. 118.

§ 1034. Counsel and witnesses for defendant.—Every person who is indicted of treason, or other capital crime, shall be allowed to make his full defense by counsel learned in the law; and the court before which he is tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, and they shall have free access to him at all seasonable hours. He shall be allowed, in his defense, to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial as is usually granted to compel witnesses to appear on behalf of the prosecution.

1 U.S.Stat. 118.

§ 1035. Verdict of less offense than charged.—In all criminal causes the defendant may be found guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offense so charged: *Provided*, That such attempt be itself a separate offense.

17 U.S.Stat. 198.

§ 1036. Verdict against part of several joint defendant.—On an indictment against several, if the jury

cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly; and the cause as to the other defendants may be tried by another jury.

17 U.S.Stat. 198.

§ 1037. **Indictments remitted by circuit and district courts to each other.**—Whenever the district attorney deems it necessary, any circuit court may, by order entered on its minutes, remit any indictment pending therein to the next session of the district court of the same district, where the offense charged in the indictment is cognizable by the said district court. And in like manner any district court may remit to the next session of the circuit court of the same district any indictment pending in the said district court. And such remission shall carry with it all recognizances, processes, and proceedings pending in the case in the court from which the remission is made; and the court to which such remission is made shall, after the order of remission is filed therein, act in the case as if the indictment, and all other proceedings in the same, had been originated in said court.

9 U.S.Stat. 72. U. S. v. Murphy, 3 Wall. 649; U. S. v. Morris, 1 Curt. C. C. 23.

§ 1038. **Remission from district to circuit court of difficult cases.**—Any district court may, by order entered on its minutes, remit any indictment pending therein to the next session of the circuit court for the same district, when, in the opinion of such district court, difficult and important questions of law are involved in the case; and thereupon the proceedings in such case shall be the same in the circuit court as if such indictment had been originally found and presented therein.

9 U.S.Stat. 72.

§ 1039. **All capital cases remitted from district to circuit courts.**—Every indictment of a capital offense, presented to a district court, together with the recognizances taken therein, shall, by order entered on its minutes, be remitted to the next session of the circuit court for the same district; and, on the filing of such order and indictment with the clerk of such circuit court, that court shall proceed thereon, in the same manner as if said indictment had been originally found and presented therein.

9 U.S.Stat. 72.

§ 1040. Capital case carried to the Supreme Court.—Whenever a judgment of death is rendered in any court of the United States, and the case is carried to the Supreme Court in pursuance of law, the court rendering such judgment shall, by its order, postpone the execution thereof from time to time and from term to term, until the mandate of the Supreme Court in the case is received and entered upon the records of such lower court. In case of affirmance by the Supreme Court, the court rendering the original judgment shall appoint a day for the execution thereof; and in case of reversal, such further proceedings shall be had in the lower court as the Supreme Court may direct.

15 U.S.Stat. 338.

§ 1041. Judgments for fines, how collected.—In all criminal or penal causes in which judgment or sentence has been or shall be rendered, imposing the payment of a fine or penalty, whether alone or with any other kind of punishment, the said judgment, so far as the fine or penalty is concerned, may be enforced by execution against the property of the defendant in like manner as judgments in civil cases are enforced: *Provided*, That where the judgment directs that the defendant shall be imprisoned until the fine or penalty imposed is paid, the issue of execution on the judgment shall not operate to discharge the defendant from imprisonment until the amount of the judgment is collected or otherwise paid.

17 U.S.Stat. 198.

§ 1042. Poor convicts sentenced and imprisoned for fines.—When a poor convict, sentenced by any court of the United States to pay a fine or fine and cost, whether with or without imprisonment, has been confined in prison thirty days, solely for the non-payment of such fine, or fine and cost, he may make application in writing to any commissioner of the United States court in the district where he is imprisoned, setting forth his inability to pay such fine, or fine and cost, and after notice to the district attorney of the United States, who may appear, offer evidence, and be heard, the commissioner shall proceed to hear and determine the matter; and if on examination it shall appear to him that such convict is unable to pay such fine, or fine and cost, and that he has not any property exceeding twenty dollars in value, except such as is by law exempt

from being taken on execution for debt, the commissioner shall administer to him the following oath: "I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil precept for debt by the laws of [State where oath is administered]; and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God." And thereupon such convict shall be discharged, the commissioner giving to the jailer or keeper of the jail a certificate setting forth the facts. [See §§ 847, 5296.]

17 U.S.Stat. 182.

CHAPTER XIX.

LIMITATIONS.

SECTION 1043. Capital offenses.

1044. Offenses not capital.

1045. Fleeing from justice.

1046. Crimes under the revenue laws.

1047. Penalties and forfeitures under laws of the United States.

1048. Parties beyond reach of process during the rebellion.

§ 1043. Capital offenses.—No person shall be prosecuted, tried, or punished for treason or other capital offense, willful murder excepted, unless the indictment is found within three years next after such treason or capital offense is done or committed.

1 U.S.Stat. 119.

§ 1044. Offenses not capital.—No person shall be prosecuted, tried, or punished for any offense not capital, except as provided in section one thousand and forty-six, unless the indictment is found or the information is instituted within three years next after such offense is committed. [Amended April 13th, 1876, 19 U. S. Stats. 32.]

1 U.S.Stat. 119. *Adams v. Woods*, 2 Cranch 336; *U. S. v. Cook*, 17 Wall. 168; *Johnson v. U. S.*, 3 McLean 89; *U. S. v. Slocum*, 1 Cr. C. C. 485; *U. S. v. Watkins*, 3 id. 442; *U. S. v. White*, 5 id. 38; id. 73; id. 116.

§ 1045. Fleeing from justice.—Nothing in the two preceding sections shall extend to any person fleeing from justice.

1 U.S.Stat. 119.

§ 1046. Crimes under the revenue laws.—No person shall be prosecuted, tried, or punished for any crime arising under the revenue laws or the slave-trade laws of the United States, unless the indictment is found or the information is instituted within five years next after the committing of such crime.

2 U.S.Stat. 290; 3 id. 452. *U. S. v. Cook*, 17 Wall. 168.

§ 1047. Penalties and forfeitures under laws of United States.—No suit or prosecution for any penalty

or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained, except in cases where it is otherwise specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued: *Provided*, That the person of the offender, or the property liable for such penalty or forfeiture, shall, within the same period, be found within the United States; so that the proper process therefor may be instituted and served against such person or property.

1 U.S.Stat. 322; 1 id. 695; 2 id. 290; 3 id. 452; 12 id. 741; 15 id. 188. *Stimpson v. Pond*, 2 Curt. C. C. 502.

§ 1048. *Parties beyond reach of process during the rebellion.*—In all cases where, during the late rebellion, any person could not, by reason of resistance to the execution of the laws of the United States, or of the interruption of the ordinary course of judicial proceedings, be served with process for the commencement of any action, civil or criminal, which had accrued against him, the time during which such person was beyond the reach of legal process shall not be taken as any part of the time limited by law for the commencement of such action.

13 U.S.Stat. 123. *U. S. v. Wiley*, 11 Wall. 508.

CHAPTER XX.

COURT OF CLAIMS—ORGANIZATION AND SESSIONS.

- SECTION 1049. Judges.
1050. Seal.
1051. Court rooms, etc., how provided.
1052. Sessions, quorum.
1053. Officers of the court.
1054. Salaries of clerks, bailiff, and messenger.
1055. Clerk's bond.
1056. Contingent fund.
1057. Reports to Congress, copies for Departments, etc.
1058. Members of Congress not to practice in the court

§ 1049. Judges.—The Court of Claims, established by the act of February twenty-four, eighteen hundred and fifty-five, shall be continued. It shall consist of a chief justice and four judges, who shall be appointed by the President, by and with the advice and consent of the Senate, and hold their offices during good behavior. Each of them shall take an oath to support the Constitution of the United States, and to discharge faithfully the duties of his office, and shall be entitled to receive an annual salary of four thousand five hundred dollars, payable quarterly from the Treasury.

10 U.S.Stat. 612; 12 id. 765; 17 id. 85.

§ 1050. Seal.—The Court of Claims shall have a seal, with such device as it may order.

12 U.S.Stat. 766.

§ 1051. Court rooms, etc., how provided.—It shall be the duty of the Speaker of the House of Representatives to appropriate such rooms in the Capitol, at Washington, for the use of the Court of Claims, as may be necessary for their accomodation, unless it appears to him that such rooms cannot be so appropriated without interfering with the business of Congress. In that case, the court shall procure, at the city of Washington, such rooms as may be necessary for the transaction of their business.

10 U.S.Stat. 614.

§ 1052. Sessions, quorum.—The Court of Claims shall hold one annual session, at the city of Washington, beginning on the first Monday in December, and continuing as long as may be necessary for the prompt disposition of the business of the court. And any two of the judges of said court shall constitute a quorum, and may hold a court for the transaction of business.

10 U.S.Stat. 614; 11 id. 30; 14 id. 9; 12 id. 768.

§ 1053. Officers of the court.—The said court shall appoint a chief clerk, an assistant clerk, if deemed necessary, a bailiff, and a messenger. The clerks shall take an oath for the faithful discharge of their duties, and shall be under the direction of the court in the performance thereof; and for misconduct or incapacity they may be removed by it from office; but the court shall report such removals, with the cause thereof, to Congress, if in session, or, if not, at the next session. The bailiff shall hold his office for a term of four years, unless sooner removed by the court for cause.

10 U.S.Stat. 614; 12 id. 765.

§ 1054. Salaries of clerks, etc.—The salary of the chief clerk shall be three thousand dollars a year, of the assistant clerk two thousand dollars a year, of the bailiff fifteen hundred dollars a year, and of the messenger eight hundred and forty dollars a year, payable quarterly from the treasury.

10 U.S.Stat. 614; 12 id. 765; 16 id. 148; 16 id. 250; 17 id. 82.

§ 1055. Clerk's bond.—The chief clerk shall give bond to the United States in such amount, in such form, and with such security as shall be approved by the Secretary of the Treasury.

11 U.S.Stat. 30.

§ 1056. Contingent fund.—The said clerk shall have authority, when he has given bond as provided in the preceding section, to disburse, under the direction of the court, the contingent fund which may from time to time be appropriated for its use; and his accounts shall be settled by the proper accounting officers of the Treasury in the same way as the accounts of other disbursing agents of the government are settled.

11 U.S.Stat. 30.

DEBTY F. PROC. 20.

§ 1057. Reports to Congress, copies for Departments, etc.—On the first day of every December session of Congress, the clerk of the Court of Claims shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, stating the amounts thereof and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered. And at the end of every term of the court he shall transmit a copy of its decisions to the heads of Departments; to the Solicitor, the Comptrollers, and the Auditors of the Treasury; to the Commissioners of the General Land-Office and of Indian Affairs; to the chiefs of bureaus, and to other officers charged with the adjustment of claims against the United States.

15 U.S.Stat. 77; 14 id. 9.

§ 1058. Members of Congress.—Members of either House of Congress shall not practice in the Court of Claims.

12 U.S.Stat. 765.

CHAPTER XXI.

COURT OF CLAIMS—JURISDICTION, ETC.

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§ 1059. Jurisdiction.—The Court of Claims shall have jurisdiction to hear and determine the following matters:

First. All claims founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, and all claims which may be referred to it by either House of Congress.

10 U.S.Stat. 612. *Nichols v. U. S.*, 7 Wall. 129 ; *Dorsheimer v. U. S.*, 7 Wall. 166 ; *Bonner v. U. S.*, 9 Wall. 156.

Second. All set-offs, counter-claims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever, on the part of the Government of the United States against any person making claim against the Government in said court.

12 U.S.Stat. 765. *Clyde v. U. S.*, 13 Wall. 38 ; *U. S. v. Russell*, 13 Wall. 623.

Third. The claim of any paymaster, quartermaster, commissary of subsistence or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible.

14 U.S.Stat. 44.

Fourth. Of all claims for the proceeds of captured or abandoned property, as provided by the act of March 12th, eighteen hundred and sixty-three, chapter one hundred and twenty, entitled "An Act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," or by the act of July two, eighteen hundred and sixty-four, chapter two hundred and twenty-five, being an act in addition thereto: *Provided*, That the remedy given in cases of seizure under the said acts, by preferring claim in the Court of Claims, shall be exclusive, precluding the owner of any property taken by agents of the Treasury Department as abandoned or captured property in virtue or under color of said acts from suit at common law, or any other mode of redress whatever, before any court other than said Court of Claims: *Provided, also*,* That the jurisdiction of the Court of Claims shall not extend to any claim against the United States growing out of the destruction or appropriation of or damage to property by the Army or Navy engaged in the suppression of the rebellion.

12 U.S.Stat. 820 ; 13 *id.* 375, 376 ; 15 *id.* 243. *U. S. v. Anderson*, 9 Wall. 56 ; *Pugh v. U. S.*, 13 Wall. 633 ; *U. S. Kimbal*, 13 Wall. 636 ; *U. S. v. Crusell*, 14 Wall. 1 ; *Slawson v. U. S.*, 16 Wall. 310.

§ 1060. Private claims in Congress.—All petitions and bills praying or providing for the satisfaction of private claims against the Government, founded upon

* Additional proviso by Act of February 18th, 1875.

any law of Congress or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, shall, unless otherwise ordered by resolution of the House in which they are introduced, be transmitted by the Secretary of the Senate or the Clerk of the House of Representatives, with all the accompanying documents, to the Court of Claims.

12 U.S.Stat. 765.

§ 1061. Judgments for set-off or counter-claim.—Upon the trial of any cause in which any set-off, counter-claim, claim for damages, or other demand is set up on the part of the Government against any person making claim against the Government in said court, the court shall hear and determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government, it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district or circuit court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such courts are enforced.

12 U.S.Stat. 765. *Allen v. U. S.*, 17 Wall. 207.

§ 1062. Decree on accounts of paymasters, etc.—Whenever the Court of Claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed, as a credit in the settlement of his accounts.

14 U.S.Stat. 44.

§ 1063. Claims referred by Departments.—Whenever any claim is made against any Executive Department, involving disputed facts or controverted questions of law, where the amount in controversy exceeds three thousand dollars, or where the decision will affect a class of cases, or furnish a precedent for the future action of any Execu-

tive Department in the adjustment of a class of cases, without regard to the amount involved in the particular case, or where any authority, right, privilege, or exemption is claimed or denied under the Constitution of the United States, the head of such Department may cause such claim, with all the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims, and the same shall be there proceeded in as if originally commenced by the voluntary action of the claimant; and the Secretary of the Treasury may, upon the certificate of any Auditor or Comptroller of the Treasury, direct any account, matter, or claim of the character, amount, or class described in this section, to be transmitted, with all the vouchers, papers, documents, and proofs pertaining thereto, to the said court, for trial and adjudication: *Provided*, That no case shall be referred by any head of a Department unless it belongs to one of the several classes of cases which, by reason of the subject-matter and character, the said court might, under existing laws, take jurisdiction of on such voluntary action of the claimant.

15 U.S.Stat. 76.

§ 1064. Procedure in cases transmitted by Departments.—All cases transmitted by the head of any department, or upon the certificate of any Auditor or Comptroller, according to the provisions of the preceding section, shall be proceeded in as other cases pending in the Court of Claims, and shall, in all respects, be subject to the same rules and regulations.

15 U.S.Stat. 76. *Clyde v. U. S.*, 13 Wall. 38.

§ 1065. Judgments in cases transmitted by Departments, how paid.—The amount of any final judgment or decree rendered in favor of the claimant, in any case transmitted to the Court of Claims under the two preceding sections, shall be paid out of any specific appropriation applicable to the case, if any such there be; and where no such appropriation exists, the judgment or decree shall be paid in the same manner as other judgments of the said court.

15 U.S.Stat. 76.

§ 1066. Claims growing out of treaties.—The jurisdiction of the said court shall not extend to any claim

against the Government not pending therein on December one, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes.

12 U.S.Stat. 767. *Ex parte Atocha*, 17 Wall. 439.

§ 1067. Claims pending in other courts.—No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States.

15 U.S.Stat. 77.

§ 1068. Aliens.—Aliens, who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject-matter and character, might take jurisdiction.

15 U.S.Stat. 243. *U. S. v. O'Keefe*, 11 Wall. 178; *Carlisle v. U. S.*, 16 id. 147.

§ 1069. Limitation.—Every claim against the United States, cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives as provided by law, within six years after the claim first accrues: *Provided*, That the claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively.

12 U.S.Stat. 767.

§ 1070. Rules of practice—contempts.—The said court shall have power to establish rules for its government and for the regulation of practice therein, and it may punish for contempt in the manner prescribed by the common law, may appoint commissioners, and may exercise such powers as are necessary to carry into effect the powers granted to it by law.

10 U.S.Stat. 613 ; 12 id. 765.

§ 1071. Oaths and acknowledgments.—The judges and clerks of said court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of the same.

12 U.S.Stat. 765.

§ 1072. Petition.—The claimant shall, in all cases, fully set forth in his petition the claim, the action thereon in Congress, or by any of the Departments, if such action has been had ; what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested ; that no assignment or transfer of said claim, or of any part thereof or interest therein, has been made, except as stated in the petition ; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and off-sets ; that the claimant, and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the government of the United States, and, whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in the said petition to be true. And the said petition shall be verified by the affidavit of the claimant, his agent, or attorney.

10 U.S.Stat. 612 ; 12 id. 767.

§ 1073. Petition, when dismissed.—The said allegations as to true allegiance and voluntary aiding, abetting, or giving encouragement to rebellion against the Government may be traversed by the Government, and if on the trial such issues shall be decided against the claimant, his petition shall be dismissed.

12 U.S.Stat. 767.

§ 1074. Burden of proof and evidence as to loyalty.—Whenever it is material in any claim to ascertain whether any person did or did not give any aid or comfort to the late rebellion, the claimant asserting the loyalty of any such person to the United States during such rebellion shall be required to prove affirmatively that such person did, during said rebellion, consistently adhere to the United States, and did give no aid or comfort to persons engaged in said rebellion; and the voluntary residence of any such person in any place where, at any time during such residence, the rebel force or organization held sway, shall be prima-facie evidence that such person did give aid and comfort to said rebellion and to the persons engaged therein.

15 U.S.Stat. 75.

§ 1075. Commissioners to take testimony.—The Court of Claims shall have power to appoint commissioners to take testimony to be used in the investigation of claims which come before it; to prescribe the fees which they shall receive for their services, and to issue commissions for the taking of such testimony, whether taken at the instance of the claimant or of the United States.

10 U.S.Stat. 613; 12 id. 765.

§ 1076. Power to call upon Departments for information.—The said court shall have power to call upon any of the Departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any Department may refuse and omit to comply with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest.

10 U.S.Stat. 614.

§ 1077. When testimony not to be taken.—When it appears to the court in any case that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not be the duty of the court to authorize the taking of any testimony therein,

10 U.S.Stat. 613.

§ 1078. Witnesses not excluded.—No witness shall

be excluded in any suit in the Court of Claims on account of color.

13 U.S.Stat. 351; 14 id. 457; 15 id. 75.

§ 1079. Interested parties.—No claimant, nor any person from or through whom any such claimant derives his alleged title, claim, or right against the United States, nor any person interested in any such title, claim, or right, shall be a competent witness in the Court of Claims in supporting the same, and no testimony given by such claimant or person shall be used except as provided in the next section.

15 U.S.Stat. 75; 12 id. 766.

§ 1080. Examination of claimant.—The court may, at the instance of the attorney or solicitor appearing in behalf of the United States, make an order in any case pending therein, directing any claimant in such case to appear, upon reasonable notice, before any commissioner of the court, and be examined on oath touching any or all matters pertaining to said claim. Such examination shall be reduced to writing by the said commissioner, and be returned to and filed in the court, and may, at the discretion of the attorney or solicitor of the United States appearing in the case, be read and used as evidence on the trial thereof. And if any claimant, after such order is made, and due and reasonable notice thereof is given to him, fails to appear, or refuses to testify or answer fully as to all matters within his knowledge material to the issue, the court may, in its discretion, order that the said cause shall not be brought forward for trial until he shall have fully complied with the order of the court in the premises.

12 U.S.Stat. 766; 15 id. 75.

§ 1081. Testimony taken where deponent resides.—The testimony in cases pending before the Court of Claims shall be taken in the county where the witness resides, when the same can be conveniently done.

10 U.S.Stat. 613.

§ 1082. Witnesses, how compelled to attend.—The Court of Claims may issue subpoenas to require the attendance of witnesses in order to be examined before any person commissioned to take testimony therein, and such subpoenas shall have the same force as if issued from

a district court, and compliance therewith shall be compelled under such rules and orders as the court shall establish.

10 U.S.Stat. 613.

§ 1083. Cross-examination.—In taking testimony to be used in support of any claim, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe; and like opportunity shall be afforded the claimant, in cases where testimony is taken on behalf of the United States, under like regulations.

10 U.S.Stat. 613.

§ 1084. Witnesses, how sworn.—The commissioner taking testimony to be used in the Court of Claims shall administer an oath or affirmation to the witnesses brought before him for examination.

10 U.S.Stat. 613.

§ 1085. Fees of commissioner.—When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and the cost of the commission and notice, shall be paid by such claimant; and when it is taken at the instance of the Government, such fees, together with all postage incurred by the Assistant Attorney-General, shall be paid out of the contingent fund provided for the Court of Claims, or other appropriation made by Congress for that purpose.

10 U.S.Stat. 613.

§ 1086. Claims forfeited for fraud.—Any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance of any claim, or of any part of any claim against the United States, shall ipso facto forfeit the same to the Government; and it shall be the duty of the Court of Claims, in such cases, to find specifically that such fraud was practiced or attempted to be practiced, and thereupon to give judgment that such claim is forfeited to the Government, and that the claimant be forever barred from prosecuting the same.

12 U.S.Stat. 767.

§ 1087. New trial on motion of claimant.—When judgment is rendered against any claimant, the court

may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

10 U.S.Stat. 614.

1088. New trial on motion of United States.—The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law.

15 U.S.Stat. 75. *Ex parte Russell*, 13 Wall. 664; *Ex parte*, in matter of U. S., 16 Wall. 699.

§ 1089. Payment of judgments.—In all cases of final judgments by the Court of Claims, or, on appeal, by the Supreme Court, where the same are affirmed in favor of the claimant, the sum due thereby shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of the Court of Claims and signed by the chief justice, or, in his absence, by the presiding judge of said court.

12 U.S.Stat. 766.

§ 1090. Interest.—In cases where the judgment appealed from is in favor of the claimant, and the same is affirmed by the Supreme Court, interest thereon at the rate of five per centum shall be allowed from the date of its presentation to the Secretary of the Treasury for payment as aforesaid, but no interest shall be allowed subsequent to the affirmance, unless presented for payment to the Secretary of the Treasury as aforesaid.

12 U.S.Stat. 766.

§ 1091. Interest on claims.—No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest.

12 U.S.Stat. 706.

§ 1092. Payment of judgment a full discharge, etc.—The payment of the amount due by any judgment of the Court of Claims and of any interest thereon allowed by law, as hereinbefore provided, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy.

12 U.S.Stat. 766.

§ 1093. Final judgment a bar.—Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy.

12 U.S.Stat. 766.

DEBT F. PROC. 31

RULES AND ORDERS.

MS.

MANUSCRIPT NOTES.

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RULES

OF THE

Supreme Court of the United States.

RULE 1. CLERK.

1. Office, where.—The clerk of this court shall reside and keep the office at the seat of the national government, and he shall not practice either as an attorney or counselor in this court or any other court while he shall continue to be clerk of this court.

Original Rule 1, promulgated Feb. 3d, 1790, 1 Cranch xvi; 1 Wheat. xiii; 1 Pet. v. Revised and corrected December Term, 1858, 21 How. v.

2. Duties.—The clerk shall not permit any original record or paper to be taken from the court-room, or from the office, without an order from the court.

Original Rule 12, promulgated Aug. 7th, 1797, 1 Cranch xviii; 1 Wheat. xv; 1 Pet. vii. Revised and corrected at December Term, 1858; 21 How. v.

RULE 2. ATTORNEYS.

1. Admission of.—It shall be requisite to the admission of attorneys or counselors to practice in this court, that they shall have been such for three years past in the supreme courts of the States to which they respectively belong, and that their private and professional character shall appear to be fair.

Original Rule 2, promulgated Feb. 5th, 1790, 1 Cranch xvi; 1 Wheat. xiii; 1 Pet. vi. Revised and corrected December Term, 1858, 21 How. v.

Ex parte Tillingham, 4 Pet. 108.

2. Oath.—They shall respectively take and subscribe the following oath or affirmation, viz :

I, _____, do solemnly swear, (or affirm, as the case may be) that I will demean myself, as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States.

Original Rule 6, promulgated Feb. 7th, 1791, 1 Oranch xvii; 1 Wheat. xiv; 1 Pet. vi. Revised and corrected December Term, 1858, 21 How. v.

Original Rules 3 and 4, promulgated Feb. 5th, 1790, 1 Oranch xvi; 1 Wheat. xiii; and 1 Pet. vi; and Rule 14, 1 Oranch xviii; 1 Wheat. xvi; and 1 Pet. vii; promulgated Aug. 12th, 1801. Relating to attorneys and counselors, abrogated on revision and correction at December Term, 1858, 21 How. v.

Amendment to the second clause, promulgated March 10th, 1865, 2 Wall. vii. Was rescinded at the December Term, 1866, 4 Wall. vii.

RULE 3. PRACTICE.

How regulated.—This court consider the practice of the courts of King's Bench, and of Chancery, in England, as affording outlines for the practice of this court; and they will, from time to time, make such alterations therein as circumstances may render necessary.

Original Rule 7, promulgated Aug. 8th, 1791, 1 Oranch xvii; 1 Wheat. xiv; 1 Pet. vi. Revised and corrected December Term, 1858, 21 How. v.

Anonymous, 2 Dall. 411.

RULE 4. BILL OF EXCEPTIONS.

Allowance of.—Hereafter the judges of the circuit and district courts shall not allow any bill of exceptions, which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and such matters of law, and those only, shall be inserted in the bill of exceptions, and allowed by the court.

Original Rule 8, promulgated Feb. 4th, 1795, 1 Oranch xvii; 1 Wheat. xiv; 1 Pet. vi. Revised and corrected December Term, 1858, 21 How. vi.

Peyton v. Brooke, 3 Oranch 92; Vasse v. Smith, 6 Oranch 226; Walton v. U. S., 9 Wheat. 651; Elliot v. Piersol, 1 Pet. 337; Pennock v.

Dialogue, 2 id. 1; Carver v. Astor, 4 id. 80; *Ex parte* Bradstreet, id. 103; Conard v. Pacific Ins. Co., 6 id. 262; Moore v. Bank of Metropolis, 13 id. 302; Camden v. Doremus, 3 How. 515; Brown v. Clarke, 4 How. 4; Zeller v. Eckert, id. 289; Stimpson v. West Chester R. R., id. 380; Maxwell v. Newbold, 18 How. 511; Suydam v. Williamson, 20 id. 427; Johnston v. Jones, 1 Black 209; Rogers v. The Marshal, 1 Wall. 644; Evans v. Patterson, 4 id. 224; Harvey v. Tyler, 2 id. 328; Young v. Martin, 8 id. 354; Norris v. Jackson, 9 id. 125; Kearney v. Denn, 15 id. 55.

RULE 5. PROCESS.

1. In name of U. S.—All process of this court shall be in the name of the President of the United States.

Original Rule 5, promulgated Feb. 5th, 1790, 1 Cranch xvi; 1 Wheat. xiv; 1 Pet. vi. Revised and corrected Dec. T. 1858, 21 How. vi.

2. Service on State.—When process at common law, or in equity, shall issue against a State, the same shall be served on the governor, or chief executive magistrate, and attorney-general, of such State.

Original Rule 10, promulgated Aug. 12th, 1796, 3 Pet. xvii. Adopted on revision Dec. T. 1858, 21 How. vi. Grayson v. Virginia, 3 Dall. 320; New Jersey v. New York, 3 Pet. 461; S. O. 5 Pet. 284; 6 Pet. 323; Massachusetts v. Rhode Island, 12 Pet. 755.

3. Subpœna, when served.—Process of subpœna, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return-day of the said process; and if the defendant, on such service of the subpœna, shall not appear at the return-day contained therein, the complainant shall be at liberty to proceed *ex parte*.

Original Rule 10, promulgated Aug. 12th, 1796, 1 Cranch vii; 1 Wheat. xv; 1 Pet. vi. Revised and corrected Dec. T. 1858, 21 How. vi.

RULE 6. MOTIONS.

1. To be in writing.—All motions hereafter made to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

One hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court granted before the argument begins. [Amended November 27th, 1876.]

Original Rule 51, promulgated January Term, 1838. 12 Pet. viii. Adopted on revision December Term, 1858, 21 How. vi.

2. Notice requisite.—No motion to dismiss, except on special assignment by the court, shall be heard, unless

previous notice has been given to the adverse party or the counsel or attorney of such party.

Original Rule 31, promulgated December Term, 1867, 6 Wall.

3. When to be submitted.—All motions to dismiss appeals and writs of error, except motions to docket and dismiss under the 9th rule, must be submitted in the first instance on printed briefs or arguments. If the court desires further argument on that subject, it will be ordered in connection with the hearing on the merits. The party moving to dismiss shall serve notice of the motion, with a copy of his brief or argument, on the counsel for plaintiff in error or appellant of record in this court, at least three weeks before the time fixed for submitting the motion, in all cases, except where the counsel to be notified resides west of the Rocky Mountains, in which case the notice shall be at least thirty days.

There may be united with a motion to dismiss a writ of error to a State Court a motion to affirm, on the ground that, although the record may show that this court has jurisdiction, it is manifest the writ was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument.

Promulgated May 6th, 1872, 13 Wall. xi. Amended May 8th, 1876.

4. Service by mail, proof of.—Affidavit of the deposit in the mail of the notice and brief to the proper address of the counsel to be served, duly post-paid, at such time as to reach him by due course of mail, the three weeks or thirty days before the time fixed by the notice, will be regarded as prima-facie evidence of service on counsel who reside without the District of Columbia. On proof of such service, the motion will be considered, unless for satisfactory reasons further time be given by the court to either party.

5. Motion day.—The court will not hear arguments on Saturday, (unless for special cause it shall order to the contrary) but will devote that day to the other business of the court; the motion day shall be Monday of each week, in lieu of Friday, and motions not required by the rules of the court to be put on the docket shall be entitled to preference immediately after the reading of opinions, if such motions shall be made before the court shall have entered upon the hearing of a cause upon the docket.

Original Rule 33, Feb. T. 1824, 9 Wheat. iv; 1 Pet. xi. Amended Jan. T. 1845, 3 How. v. Rule 27 in revision of 1858, 21 How. xv.

RULE 7. LAW LIBRARY.

1. Use of books regulated.—During the session of the court, any gentleman of the bar having a cause on the docket, and wishing to use any book or books in the law library, shall be at liberty, upon application to the clerk of the court, to receive an order to take the same (not exceeding at any one time three) from the library, he being thereby responsible for the due return of the same within a reasonable time, or when required by the clerk. And it shall be the duty of the clerk to keep, in a book for that purpose, a record of all books so delivered, which are to be charged against the party receiving the same. And in case the same shall not be so returned, the party receiving the same shall be responsible for, and forfeit and pay, twice the value thereof; as also one dollar per day for each day's detention beyond the limited time.

2. Conference-room.—The clerk shall take charge of the books of the court, together with such of the duplicate law books as Congress may direct to be transferred to the court, and arrange them in the conference-room, which he shall have fitted up in a proper manner; and he shall not permit such books to be taken therefrom by any one, except the judges of the court.

Original Rule 34, Jan. T. 1828, 1 Pet. xi; 39, Jan. T. 1833, 7 Pet. iv. Revised Dec. T. 1858, 21 How. vi.

3. The clerk shall deposit in the law library, to be there carefully preserved, one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs, or arguments filed therein. [October 25th, 1875.]

RULE 8. WRIT OF ERROR AND RETURN-DAY.

1. Return, how made.—The clerk of the court to which any writ of error shall be directed may make return of the same, by transmitting a true copy of the record, and of all proceedings in the cause, under his hand and the seal of the court.

Original Rule 11, Feb. 13, 1797, 1 Cr. xvii; 1 Wheat. xv; 1 Pet. vii. Revised Dec. T. 1858, 21 How. vii. *Worcester v. Georgia*, 6 Pet. 515; *Keene v. Whittaker*, 13 Pet. 459. (See references under Rule 9.)

2. Opinions annexed to record.—In all cases brought to this court by writ of error or appeal, to review any

judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

Original Rule 30, promulgated February Term, 1823, 8 Wheat. vi; 1 Pet. x. Revised and corrected December Term, 1858, 21 How. vii.

3. What to be filed.—No cause will hereafter be heard until a complete record, containing in itself, without references aliunde, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

Original Rule 25, Feb. T. 1817, 2 Wheat. i; 1 Pet. ix. Dec. T. 1858, 21 How. vii. See *Bingham v. Cabbot*, 3 Dall. 27; *Estho v. Lear*, 7 Pet. 130; *Innerarity v. Byrne*, 5 How. 295.

4. Original papers.—Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit court, or district court exercising circuit court jurisdiction, that original papers of any kind should be inspected in this court, upon appeal or writ of error, such presiding judge may make such rule or order for the safe keeping, transporting, and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

Original Rule 33, Dec. T. 1867, 6 Wall. vi. *The Elsinour*, 1 Wheat. 439.

5. Writ, when returnable.—In cases where final judgment is rendered more than thirty days before the first day of the next term of this court, the writ of error and citation, if taken before, must be returnable on the first day of said term, and be served before that day; but in cases where the judgment is rendered less than thirty days before the first day, the writ of error and citation may be made returnable on the third Monday of the said term, and be served before that day.

Amended April 28th, 1873, 15 Wall. 5. *Mossman v. Higginson*, 4 Dall. 12; *Blair v. Miller*, 4 Dall. 21; *Wood v. Lide*, 4 Cranch 180; *Lloyd v. Alexander*, 1 Cranch 365; *Villabolas v. U. S.*, 6 How. 90; *U. S. v. Curry*, id. 112; *Hogan v. Ross*, 9 How. 602; *Insurance Co. of Val. of Virginia v. Mordecai*, 21 How. 200; *Porter v. Foley*, id. 393; *Castro v. U. S.*, 3 Wall. 46; *Garrison v. Cass Co.*, 5 Wall. 823; *Alviso v. U. S.*, 5 Wall. 824; *Washington Co. v. Durant*, 7 Wall. 694.

RULE 9. DOCKETING CASES.

1. Duties of parties.—In all cases where a writ of

error or an appeal shall be brought to this court from any judgment or decree rendered thirty days before the commencement of the term, it shall be the duty of the plaintiff in error or appellant, as the case may be, to docket the cause and file the record thereof with the clerk of this court within the first six days of the term; and if the writ of error or appeal shall be brought from a judgment or decree rendered less than thirty days before the commencement of the term, it shall be the duty of the plaintiff in error or appellant to docket the cause, and file the record thereof with the clerk of this court within the first thirty days of the term; and if the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the case docketed and dismissed, upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered, stating the cause, and certifying that such writ of error or appeal has been duly sued out and allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the cause and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

Original Rule 16, February Term, 1803, 1 Cranch xviii; 1 Wheat. xvi; 1 Pet. vii. Rule 19, February Term, 1806, 1 Wheat. xvi; 1 Pet. viii; 82, promulgated February Term, 1821, 6 Wheat. vi. Rule 29, 1 Pet. x. Rule 43, January Term, 1835, 9 Pet. vii. Rule 63, December Term, 1853, 16 How. ix. Revised December Term, 1858, 21 How. vii.

Bingham v. Morris, 7 Cranch 99; The Jonquille, 6 Wheat. 452; Pickett v. Legerwood, 7 Pet. 144; Veitch v. Farmers Bk, 6 Pet. 777; Yeaton v. Lenox, 8 Pet. 123; Owings v. Tiernan, 10 Pet. 24; West v. Brashear, 12 Pet. 101; Amis v. Pearl, 15 Pet. 211; Gwin v. Breedlove, 15 Pet. 384; Holliday v. Batson, 4 How. 645; U. S. v. Boisdoré, 7 How. 658; Smith v. Clark, 12 How. 21; Kirkland v. Union Bank of Louisiana, 16 How. 135; U. S. v. Fremont, 18 How. 30; Sturgess v. Harrold, id. 40; Steamer Virginia v. West, 19 How. 182; Rogers v. Law, 21 How. 526; Overton v. Cheek, 22 How. 46; Mesa v. U. S., 2 Black 721; Castro v. U. S., 3 Wall. 46; Sparrow v. Strong, id. 97; Garrison v. Cass Co., 5 Wall. 823; German v. U. S., 5 Wall. 825; Edmonson v. Bloomshire, 7 Wall. 306.

2. Rights of appellee.—But the defendant in error or appellee may, at his option, docket the cause, and file a copy of the record with the clerk of the court; and if the case is docketed, and a copy of the record filed with the clerk of this court by the plaintiff or appellant, within the periods of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time

thereafter during the term, the case shall stand for argument at the term.

Original Rule 43, January Term, 1835, 9 Pet. vii. Rule 63, December Term, 1853, 16 How. ix. Revised December Term, 1858, 21 How. viii. Bk. of U. S. v. Swan, 3 Pet. 68.

3. Appearance of counsel.—Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the plaintiff in error or appellant shall be entered.

Original Rule 31, promulgated December Term, 1867, 6 Wall. v.

4. Time extended.—In all cases where the period of thirty days is mentioned in this rule, it shall be extended to sixty days in writs of error and appeals from California, Oregon, Washington, New Mexico, Utah, Nevada, Arizona, Montana, and Idaho.

Original Order 63, promulgated December Term, 1853, 16 How. ix. Revised December Term, 1858, 21 How. viii. Amendment promulgated March 10th, 1865, 2 Wall. viii.

RULE 10. SECURITY FOR COSTS.

1. Fee bond.—In all cases the plaintiff in error or appellant, on docketing a cause and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction for the payment of his fees, or otherwise satisfy him in that behalf. [Amended May 8th, 1876.]

Original Rule 20, Feb. T., 1808, 4 Cr. 537; 1 Wheat. xvii; 1 Pet. viii. Amended Rule 37, Jan. T., 1831, 5 Pet. vii, 724.

Anon., 7 Pet. 524; West v. Brashear, 12 Pet. 101; Owings v. Tierman, 10 Pet. 447; Van Rensselaer v. Watts, 7 How. 785.

PRINTING RECORDS.

2. Costs.—In all cases the clerk shall have twenty copies of the record printed for the court, and the cost of printing shall be charged to the Government in the expenses of the court. [Amended Nov. 1st, 1875.]

Original Rule 37, promulgated January Term, 1831, 5 Pet. vii, 724. Anon., 5 Pet. 724.

3. Duty of clerk.—The clerk shall furnish copies for the printer, shall supervise the printing, and shall take care of and distribute the printed copies to the judges, the reporter, and the parties, from time to time, as required.

4. Fees of.—In each case fees shall be charged in the taxable costs for but one manuscript copy of the record, and that shall be to the party bringing the cause into court, unless the court shall otherwise direct. [Amended Nov. 27th, 1876.]

5. Who entitled to copy.—In all cases the clerk shall deliver a copy of the printed record to each party; and in cases of dismissal, reversal, or affirmance with costs, the fees for the said manuscript copy of the record shall be taxed against the party against whom costs are given, and which charge includes the charge for the copy furnished him.

Original Rule 37, Jan. T. 1831, 5 Pet. vii, 724. Anon., 5 Pet. 724.

6. Charge in case of dismissal.—In all cases of dismissal for want of jurisdiction, the fees for the copy shall be taxed against the party bringing the cause into Court, unless the court shall otherwise direct. [Amended May 8th, 1876]

Original Rule 37, Jan. T., 1831, 5 Pet. vii. 724. Anon., Pet. 724 : *Caldwell v. Jackson*, 7 Cr. 277.

ATTACHMENT FOR COSTS.

7. When to issue.—Upon the clerk of this court producing satisfactory evidence, by affidavit, or the acknowledgment of the parties or their sureties, of having served a copy of the bill of fees due by them, respectively, in this court, on such parties or their sureties, an attachment shall issue against such parties or sureties, respectively, to compel payment of the said fees.

Original Rule 31, Feb. T. 1808, 4 Cr. 537 ; 1 Wheat. xviii ; 1 Pet. viii. *Caldwell v. Jackson*, 7 Cr. 276.

RULE 11. TRANSLATIONS.

How supplied.—Whenever any record, transmitted to this court upon a writ of error or appeal, shall contain any document, paper, testimony, or other proceeding in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceeding, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed, but the case shall be reported to this court by the clerk, and the court will thereupon remand it to the inferior

court in order that a translation may be there supplied and inserted in the record.

Original Rule 60, promulgated December Term, 1851, 12 How. xl.

RULE 12. EVIDENCE.

1. Further proof.—In all cases where further proof is ordered by the court, the depositions which shall be taken shall be by a commission to be issued from this court, or from any circuit court of the United States.

Original Rule 25, promulgated February Term, 1816, 1 Wheat. xix. Rule 24, 1 Pet. ix.

Brig James Wells v. U. S., 7 Cranch 22; *Hawthorne v. U. S.*, id. 107; *The Western Metropolis*, 12 Wall. 389.

2. In maritime cases.—In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any circuit court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice: *Provided, however*, That nothing in this rule shall prevent any party from giving oral testimony in open court in cases where, by law, it is admissible.

Original Rule 32, promulgated February Term, 1817, 2 Wheat. vii. 1 Pet. ix.

The St. Lawrence, 8 Cranch 434; *The Frances*, id. 354; *The Euphrates*, id. 385; *The Mary*, id. 388; *The Grotius*, id. 456; *Schooner Adeline*, 9 Cranch 288; *The Samuel*, 1 Wheat. 9; *The Venus*, id. 112; *The Dos Hermanos*, 2 Wheat. 77; *The London Packet*, id. 371; *The Fortuna*, 3 Wheat. 236; *The Atalanta*, id. 409; *The Freundschaft*, id. 14; *The Experiment*, 4 Wheat. 84; *The Venus*, 5 Wheat. 127; *The Western Metropolis*, 12 Wall. 389.

RULE 13. DEEDS, ETC., OBJECTIONS TO, ADMISSIONS.

In equity and admiralty.—In all cases of equity and admiralty jurisdiction heard in this court, no objection shall hereafter be allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the

record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

Original Rule 32, promulgated February Term, 1824, 9 Wheat. iv; 1 Pet. xi.

The Pizarro, 2 Wheat. 227; *Hinde v. Longworth*, 11 Wheat. 206; *Mechanics Bk. of Alexandria v. Seton*, 1 Pet. 307; *Harrison v. Nixon*, 9 Pet. 536. And see *Holmes v. Trout*, 7 Pet. 171; *Boone v. Chiles*, 10 Pet. 177; *Mitchel v. U. S.*, 9 Pet. 711; *Thomas v. Lawson*, 21 How. 331.

RULE 14. CERTIORARI.

Diminution of record.—No certiorari for diminution of the record shall be hereafter awarded in any cause, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such certiorari shall be made at the first term of the entry of the cause; otherwise the same shall not be granted, unless upon special cause shown to the court accounting satisfactorily for the delay.

Original Rule 31, promulgated February Term, 1824, 9 Wheat. iv; 1 Pet. x.

Field v. Milton, 3 Oranch. 514; *Barton v. Petit*, 7 id. 283; *Stewart v. Ingle*, 9 Wheat. 526; *Elmore v. Grymes*, 1 Pet. 472; *Worcester v. State of Georgia*, 6 Pet. 536; *Holmes v. Trout*, 7 Pet. 210; *Stimpson v. West Chester R. R. Co.*, 3 How. 556; *Morgan v. Curtenius*, 19 How. 8; *Clark v. Hackett*, 1 Black 77; *Ex parte Dugan*, 2 Wall. 134; *Stearns v. U. S.*, 4 Wall. 1; *U. S. v. Adams*, 9 Wall. 661; *Ex parte Van Orden*, 3 Blatch. 166.

RULE 15. DEATH OF A PARTY.

1. Abatement and revivor.—Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the cause shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order, that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dis-

missed; and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and on hearing have the same reversed if it be erroneous: *Provided, however,* That a copy of every such order shall be printed in some newspaper at the seat of government in which the laws of the United States shall be printed by authority, for three successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

Original Rule 31, promulgated February Term, 1821, 6 Wheat. v; 1 Pet. ix.

Green v. Watkins, 6 Wheat. 260; McKinney v. Carroll, 12 Pet. 66; Phillips v. Preston, 11 How. 294; Barribeau v. Brant, 17 How. 43; Suydam v. Ewing, 2 Blatch. 359.

2. When action abates.—When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

Original Rule 61, promulgated December Term, 1851, 13 How. v.

Hook v. Linton, 10 Pet. 107.

3. When either party to a suit in the circuit courts of the United States shall desire to prosecute a writ of error or appeal to the Supreme Court of the United States from any final judgment or decree, rendered in said circuit courts, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead, and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some State or Territory of the United States, the party desiring such writ of error or appeal may procure the same and may supersede or stay proceedings on such judgment or decree in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the commencement of the court to which such writ of error or appeal is returnable, the plaintiff in error, or appellant, shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within

the jurisdiction of the court which rendered said judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some State or Territory of the United States, and stating therein the name and character of such representative, and the State or Territory in which such representative resides; and upon such suggestion he may, on motion, obtain an order that, unless such representative shall make himself a party within the first ten days of the ensuing term of the court, the plaintiff in error or appellant shall be entitled to open the record, and on hearing have the judgment or decree reversed, if the same be erroneous: *Provided, however*, That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the beginning of the term of the Supreme Court then next ensuing; and *provided*, also, that in every such case, if the representative of the deceased party does not appear by the tenth day of the term next succeeding said suggestion, and the measures above provided to compel the appearance of such representative have not been taken within the time as above required, by the opposite party, the case shall abate; and *provided*, also, that the said representative may, at any time, before or after said suggestion, come in and be made a party to the suit, and thereupon the cause shall proceed, and be heard and determined as in other cases.

December Term, 1874.

RULE 16. NON-APPEARANCE OF PLAINTIFF.

At trial.—Where there is no appearance for the plaintiff when the case is called for trial, the defendant may have the plaintiff called and dismiss the writ of error, or may open the record and pray for an affirmance.

Original Rule 18½, promulgated February Term, 1806, 3 Pet. xvii.

RULE 17. NON-APPEARANCE OF DEFENDANT.

At trial.—Where the defendant fails to appear when the cause shall be called for trial, the court may proceed to hear an argument on the part of the plaintiff, and to give judgment according to the right of the cause.

Original Rule 15, promulgated December 9th, 1801; 1 Cranch xviii; 1 Wheat. xvi; 1 Pet. vii.

Oswald v. State of New York, 2 Dall. 415.

RULE 18. NON-APPEARANCE OF EITHER PARTY.

At call of docket.—When a case is reached in the regular call of the docket, and no appearance is entered for either party, the case shall be dismissed at the costs of the plaintiff.

Original Rule 54, promulgated January Term, 1850, 8 How. v. Rescinded by Rule 59, promulgated December Term, 1851, 12 How. xi.

Rodford v. Craig, 5 Cranch 289. Party allowed to withdraw his appearance, Massachusetts v. Rhode Island, 12 Pet. 757; U. S. v. Yates, 6 How. 605.

RULE 19. NEITHER PARTY READY.

At second term, dismissal.—When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dismissed at the costs of the plaintiff, unless sufficient cause is shown for further postponement.

Original Rule 55, promulgated January Term, 1850, 8 How. vi.

RULE 20. PRINTED ARGUMENTS.

1. Distribution of copies.—In all cases brought here on appeal, writ of error, or otherwise, the court will receive printed arguments without regard to the number of the case on the docket, if the counsel on both sides shall choose so to submit the same within the first ninety days of the term; but twenty copies of the arguments, signed by attorneys or counselors of this court, must be first filed: ten of these copies for the court, two for the reporter, three to be retained by the clerk, and the residue for counsel.

Original Rule 40, promulgated January Term, 1833, 7 Pet. iv. Amendment, 16 Pet. viii. Amended January Term, 1845. 3 How. vi. Amended January Term, 1850, 8 How. vi. Amendment December Term, 1864, 2 Wall. viii; 3 Wall. viii.

2. Effect of filing.—When a case is reached in the regular call of the docket, and a printed argument shall

be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.

3. When oral argument presented.—When a case is taken up for trial upon the regular call of the docket, and argued orally in behalf of only one of the parties, no printed argument will be received unless it is filed before the oral argument begins, and the court will proceed to consider and decide the case upon the *ex parte* argument.

Original Rule 53, promulgated December Term, 1850, 10 How. v.

4. Brief not received after argument.—No brief or argument will be received, either through the clerk or otherwise, after a case has been argued or submitted, except upon leave granted in open court after notice to opposing counsel.

December Term, 1874.

RULE 21. TWO COUNSEL.

1. On argument.—Only two counsel shall be heard for each party on the argument of a cause.

Original Rule 23, promulgated February Term, 1812, 1 Wheat. xviii; 1 Pet. 9; December Term, 1870; 11 Wall. 9; amendment promulgated November 16th, 1872, 14 Wall. xi.

Anonymous, 7 Cranch 1; McCulloch v. Maryland, 4 Wheat. 322. Note, The Gray Jacket, 5 Wall. 370.

2. Two hours for argument.—Two hours on each side shall be allowed to the argument, and no more, without special leave of the court, granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion: *Provided, always,* That a fair opening of the case shall be made by the party having the opening and closing arguments.

Original Rule 53, promulgated January Term, 1850, 8 How. v. Amendment, November 16th, 1872, 14 Wall. xi.

See, The Gray Jacket, 5 Wall. 370.

3. Counsel for plaintiff.—The counsel for the plaintiff in error, or appellant, shall file with the clerk of the court, at least six days before the case is called for argument, twenty copies of a printed brief, one of which shall,

on application, be furnished to each of the counsel engaged upon the opposite side.

Original Rule 30, promulgated February Term, 1821, 6 Wheat. v. Rule 27, 1 Pet. ix. Original Rule 53, promulgated January Term, 1850, 8 How. v. Amendment promulgated 16th November, 1872, 14 Wall. xl.

Portland Co. v. U. S. 15 Wall. 1; Deitsch v. Wiggins, 15 Wall. 539; Ryan v. Koch, 17 Wall. 19.

4. Brief, what to contain.—This brief shall contain, *in the order here stated*:

1. **STATEMENT.**—A concise abstract, or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

2. **ERRORS ASSIGNED.**—An assignment of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and specifically each error asserted and intended to be urged, and in cases brought up by appeal, the assignment shall state, as specifically as may be, in what the decree is alleged to be erroneous. If error is assigned to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

3. **POINTS OF LAW OR FACT.**—A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record, and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

5. **Charge of court.**—When the error alleged is to the charge of the court, the specification shall set out the part referred to totidem verbis, whether it be instructions given or instructions refused.

Lucas v. Brooks, 18 Wall. 436.

6. **Error in rulings.**—When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected.

See Peyton v. Brooks, 3 Cranch 92; Dickinson v. Planters Bank, 16 Wall. 257.

7. **Counsel for appellee, brief of.**—Counsel for a

defendant in error, or an appellee, shall file with the clerk twenty printed copies of his argument, at least three days before the case is called for hearing. His brief shall be of a like character with that required of the plaintiff or appellant, except that no assignment of errors is required, and no statement of the case, unless that presented by the plaintiff or appellant is controverted.

8. Errors not assigned, disregarded.—Without such an assignment of errors, counsel will not be heard, except at the request of the court, and errors not assigned according to this rule will be disregarded, though the court, at its option, may notice a plain error not assigned.

9. Default, effect of.—When, according to this rule, a plaintiff in error, or an appellant, is in default, the case may be dismissed on motion, and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and with request of the court.

Original Rule 53, promulgated January Term, 1850, 8 How. v.

10. Effect of default on argument.—When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

Original Rule 53, promulgated April 24th, 1850, 8 How. vi. Amendment promulgated February 9th, 1865, 2 Wall. viii.

See, generally, *Schooner Catherine v. U. S.*, 7 Cranch 99; *Mitchell v. U. S.*, 8 Pet. 307; *Bethell v. Mathews*, 13 Wall. 1.

RULE 22. ORDER OF ARGUMENT.

Opening and close.—The plaintiff or appellant in this court shall be entitled to open and conclude the case. But when there are cross-appeals, they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

RULE 23. INTEREST.

1. On affirmance.—In cases where a writ of error is

prosecuted to this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied from the date of the judgment below, until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment is rendered.

Original Rule 62, promulgated December Term, 1851, 13 How. v.

Brown v. Van Braam, 3 Dall. 356; Sneed v. Wister, 8 Wheat. 690; Mitchell v. Harmony, 13 How. 116; Perkins v. Fourniquet, 14 id. 328; Young v. Godbe, 15 Wall. 562.

In admiralty cases, in discretion of court, Hemmonway v. Fisher, 20 How. 255. See Himely v. Rose, 5 Cranch 317; The Santa Maria, 10 Wheat. 431.

2. Damage on frivolous appeal.—In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at the rate of ten per cent., in addition to interest, shall be awarded upon the amount of the judgment.

Original Rules 17, 18, promulgated February Term, 1803, 1 Cranch xviii. Amended December Term, 1874.

Jennings v. Brig Perseverance, 3 Dall. 336; Cotton v. Wallace, id. 804; Boyce v. Grundy, 9 Pet. 275; McNeil v. Holbrook, 12 id. 84; Barrow v. Hill, 13 How. 54; Kilbourne v. State Savings Institution, 22 id. 503; Perkins v. Fourniquet, 14 id. 332; Sutton v. Bancroft, 23 id. 320; Jenkins v. Banning, id. 455; Hall v. Jordan, 19 Wall. 271.

3. On appeal from decree.—The same rule shall be applied to decrees for the payment of money in cases of chancery, unless otherwise ordered by this court.

Original Rule 62, promulgated December Term, 1851, 13 How. v; 1 Wheat. xvi; 1 Pet. vii. Amendment promulgated December Term, 1870, 11 Wall. x.

Interest not allowed in admiralty, unless specially directed by the court, 20 How. 255.

RULE 24. COSTS.

1. On dismissal.—In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, as the case may be, unless otherwise agreed by the parties.

Original Rule 45, promulgated January Term, 1838, 12 Pet. vii. Winchester v. Jackson, 3 Cranch 515; Inglee v. Coolidge, 2 Wheat. 363; McIver v. Wattles, 9 Wheat. 650; Brown v. Union Bk. of Florida, 4 How. 466; Strader v. Graham, 18 How. 602.

2. On affirmance.—In all cases of affirmance of any judgement or decree in this court, costs shall be allowed to the defendant in error or appellee, as the case may be, unless otherwise ordered by the court.

Original Rule 46, promulgated January Term, 1838, 12 Pet. vii.

Walton v. U. S., 9 Wheat. 658; Clarke v. Harwood, 3 Dall. 343; Campbell v. Gordon, 6 Cranch 183.

3. On reversal.—In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, as the case may be, unless otherwise ordered by the court. The costs of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

Original Rule 22, promulgated February Term, 1810, 1 Wheat. xviii; 1 Pet. ix. Rule 47, promulgated January Term, 1838, 12 Pet. vii. Amendment promulgated December Term, 1863, 1 Wall. v.

Montalet v. Murray, 4 Cranch 46; McKnight v. Craig, 6 Cranch 187; Bradstreet v. Potter, 16 Pet. 317.

4. United States exempt.—Neither of the foregoing rules shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

Original Rule 48, promulgated January Term, 1838, 12 Pet. vii.

U. S. v. La Vengeance, 3 Dall. 301; U. S. v. Hove, 8 Cranch 73; U. S. v. Barker, 2 Wheat. 395; The Antelope, 12 Wheat. 546; U. S. v. Ringgold, 8 Pet. 163; U. S. v. McLamore, 4 How. 286; U. S. v. Boyd, 5 How. 30.

5. Mandate.—In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other proper process, in the nature of a *procedendo*, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

Original Rule 49, promulgated January Term, 1838, 12 Pet. vii.

The Santa Maria, 10 Wheat. 431; Skillern v. Meigs, 6 Cranch. 267; Ex parte Story, 12 Pet. 344; Poultney v. City of Lafayette, 12 Pet. 472; Ex parte Sibbald v. U. S., 1d. 493; West v. Brashear, 14 Pet. 51; Mitchel v. U. S., 15 Pet. 62; Outler v. Rae, 7 How. 737; Ken-

nedy v. Bk. of Georgia, 8 How. 586; *Stafford v. Union Bk. of Louisiana*, 16 How. 135; *U. S. v. Fremont*, 18 How. 30.

6. Costs to be inserted.—When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

Original Rule 50, promulgated January Term, 1838, 12 Pet. vii.

See *Story v. Livingston*, 13 Pet. 359.

In admiralty cases costs may be apportioned. *Penhallow v. Doane*, 3 Dall. 54.

RULE 25. OPINIONS OF THE COURT.

1. Recorded.—All opinions delivered by the court shall immediately, upon the delivery thereof, be delivered over to the clerk to be recorded. And it shall be the duty of the clerk to cause the same to be forthwith recorded and to deliver a copy to the reporter, as soon as the same shall be recorded.

Original Rule 41, promulgated March 14th, 1834, 8 Pet. vii.

• See *Harrell v. Beale*, 17 Wall. 590.

2. Recorded during the term.—The opinions of the court, as far as practicable, shall be recorded during the term, so that the publication of the reports may not be delayed thereby.

3. Preservation of.—The original opinions of the court shall be filed with the clerk of this court for preservation.

Original Rule, promulgated January Term, 1834, 8 Pet. vii.

RULE 26. CALL OF THE DOCKET.

1. On second day of term.—The court on the second day in each term will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day, during the term, in the same order (except as hereinafter provided); and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed in the argument, the cause shall go down to the

foot of the docket, unless some good and satisfactory reason to the contrary shall be shown to the court.

Original Rule 35, promulgated March, 1830, 3 Pet. xvi.

See *Barry v. Mercein*, 4 How. 574.

2. Ten causes each day.—Ten causes only shall be considered as liable to be called on each day during the term, including the one under argument.

Original Rule 35, promulgated March, 1830, 3 Pet. xvi.

3. Criminal cases.—Criminal cases may be advanced, by leave of the court, on motion of either party.

Original Rule, promulgated December Term, 1866, 4 Wall. vii.

4. Cases of general public interest.—Revenue cases and cases in which the United States are concerned, which also involve or affect some matter of general public interest, may also, by leave of the court, be advanced on motion of the Attorney-General.

All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons for the application.

Original Rule, Dec. Term, 1866, 4 Wall. vii, amended May 3d, 1875. *U. S. v. Fossatt*, 21 How. 446; see *Barry v. Mercein*, 4 How. 574; *Revenue Cases, Davenport City v. Dows*, 15 Wall. 390.

5. Order to be preserved.—No other cause shall be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances, to be shown to the court. Every cause which shall have been called in its order, and passed, and put at the foot of the docket, shall, if not again reached during the term it was called, be continued to the next term of the court.

Original Rule 36, promulgated March, 1830, 3 Pet. xvii. Amendment to last paragraph promulgated February 5th, 1840, 14 Pet. xi.

State of Penn. v. Wheeling and Belmont B. Co., 11 How. 528.

6. Causes heard together.—Two or more cases also involving the same question may, by leave of the court, be heard together, but they must be argued as one case.

Original Rule, promulgated December Term, 1866, 4 Wall. vii.

7. Reinstatement of cause.—If, after a cause has been passed, under circumstances which do not place it at the foot of the docket, the parties shall desire to have it heard, they may file with the clerk their joint request to that effect, and the cause shall then be by him reinstated

for call, ten cases after that under argument or next to be called at the end of the day the request is filed. If the parties will not unite in such a request, either may move to take up the cause, and it shall then be assigned to such place upon the docket as the court may direct. No stipulation to pass a cause without placing it at the foot of the docket will be recognized as binding upon the court. A cause can only be so passed upon application made and leave granted in open court.

RULE 27. ADJOURNMENT.

Announcement.—The court will, at every session, announce on what day it will adjourn at least ten days before the time which shall be fixed upon; and the court will take up no case for argument, nor receive any case upon printed briefs, within three days next before the day fixed upon for adjournment.

Original Rule 52, promulgated January Term, 1838, 12 Pet. viii.
Rule 28 on revision of December Term, 1858, 21 How. xv.

RULE 28. DISMISSAL, IN VACATION.

On written agreement.—Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in any appeal, shall at any time hereafter, in vacation and out of term time, by their respective attorneys, who are entered as such on the record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed as to costs, and also paying to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party which may request it a copy of the agreement filed; but no mandate or other process is to issue without an order by the court.

Original Rule 64, promulgated December Term, 1857, 20 How. iv.
Rule 29 of Revision of 1858, 21 How. xvi.

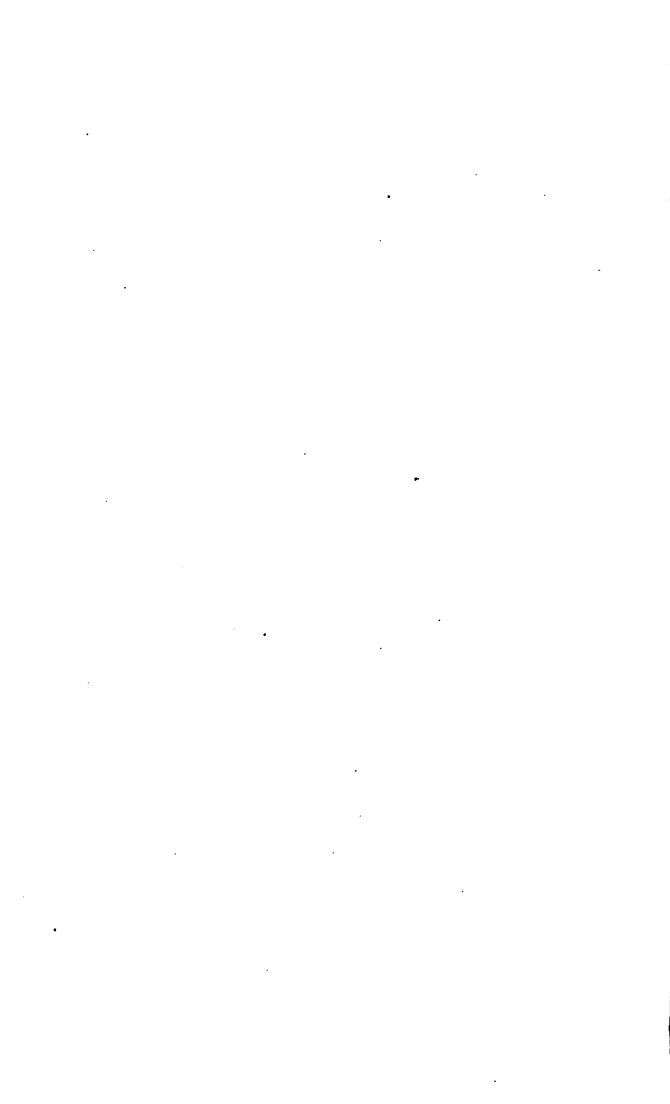
RULE 29. SUPERSEDEAS.

Bond of indemnity.—Supersedeas bonds in the circuit courts must be taken, with good and sufficient security,

that the plaintiff in error or appellant shall prosecute his writ or appeal to effect and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including "just damages for delay," and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages; or where the property is in the custody of the marshal, under admiralty process, as in case of capture or seizure; or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use and detention of the property and the costs of the suit and "just damages for delay," and costs and interest on the appeal.

Original Rule 32, promulgated December Term, 1867, 6 Wall. v.

Rules which govern sufficiency of security, *French v. Shoemaker*, 12 Wall. 86; *Stafford v. City of New Orleans*, 18 How. 135; *Bigler v. Waller*, id. 242; *Jones v. McCarter*, 21 Wall. 17.



ORDER

IN REFERENCE TO

Appeals from the Court of Claims.

*REGULATIONS PRESCRIBED BY THE SUPREME COURT OF
THE UNITED STATES, UNDER WHICH APPEALS MAY
BE TAKEN FROM THE COURT OF CLAIMS TO
SAID SUPREME COURT.*

RULE 1.

Record on appeal.—In all cases hereafter decided in the Court of Claims, in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court upon the following record, and none other :

1. **TRANSCRIPT.**—A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.

2. **STATEMENT OF FACTS AND CONCLUSIONS OF LAW.**—A finding by the Court of Claims of the facts in the case established by the evidence in the nature of a special verdict, but not the evidence establishing them; and a separate statement of the conclusions of law upon said facts, on which the court founds its judgment or decree. The finding of facts and conclusions of law to be certified to this court as a part of the record.

Original Rule promulgated December Term, 1865, 3 Wall. vii. Clause 2 amended December Term, 1872, 17 Wall. xvii.

De Groot v. U. S. 5 Wall. 419; *U. S. v. Adams*, 6 Wall. 101; *U. S. v. Alire*, 6 Wall. 573; *Ex parte Zellner*, 9 Wall. 244; *U. S. v. Ayres*, 9 Wall. 608; *Ex parte Roberts*, 15 Wall. 384; *U. S. v. Henry*, 17 Wall.

405. See *Burr v. Des Moines Co.*, 1 Wall. 102; *Gordon v. U. S.*, 2 Wall. 561; *Hubbell v. U. S.*, 6 Ct. of Cl. 53; *Wilcox v. U. S.*, Ct. of Cl. 77; *Henry v. U. S.*, 9 Ct. of Cl. 22; *Atocha's Case*, 9 Ct. of Cl. 33.

RULE 2.

Appeal, how taken.—In all cases in which judgments or decrees have heretofore been rendered, where either party is by law entitled to an appeal, the party desiring it shall make application to the Court of Claims by petition for the allowance of such appeal. Said petition shall contain a distinct specification of the errors alleged to have been committed by said court in its rulings, judgment, or decree in the case. The court shall, if the specification of alleged error be correctly and accurately stated, certify the same, or may certify such alterations and modifications of the points decided and alleged for error as, in the judgment of said court, shall distinctly, fully, and fairly present the points decided by the court. This, with the transcript mentioned in Rule 1, (except the statement of facts and law therein mentioned) shall constitute the record on which those cases shall be heard in the Supreme Court.

Promulgated December Term, 1865, 3 Wall. vii. *Silverhill v. U. S.*, 5 Ct. of Cl. 610.

RULE 3.

Order of allowance, limitation.—In all cases, an order of allowance of appeal by the Court of Claims, or the chief justice thereof in vacation, is essential, and the limitation of time for granting such appeal shall cease to run from the time an application is made for the allowance of appeal.

Promulgated December Term, 1865, 3 Wall. viii. See *Nutt v. U. S.*, 8 Ct. of Cl. 185.

RULE 4.

Findings to be filed.—In all cases in which either party is entitled to appeal to the Supreme Court, the Court of Claims shall make and file their finding of facts and their conclusions of law therein, in open court, before or at the time they enter their judgment in the case.

Promulgated December Term, 1869, 9 Wall. ix; U. S. v. Adams, 9 Wall. 661; Mahan v. U. S., 14 Wall. 109. See Lawrence v. U. S., 8 Ct. of Cl. 252.

RULE 5.

Exceptions to want of findings.—In all such cases either party, on or before the hearing of the cause, may submit to the court a written request to find specifically as to the matter of fact which such party may deem material to the judgment in the case, and if the court fails or refuses to find in accordance with such prayer, then such prayer and refusal shall be made a part of the record, certified on the appeal to this court.

Promulgated December Term, 1869, 9 Wall. ix.; Mahan v. U. S., 14 Wall. 109.



RULES OF PRACTICE

FOR THE

COURTS OF EQUITY OF THE UNITED STATES.

Rules Promulgated February Term, 1822, 7 Wheat. v. Superseded by Rules promulgated March, 1842, 17 Pet. lxi. Abrogated by Rules of Supreme Court, Edition of 1866.

PRELIMINARY REGULATIONS.

RULE 1.

Court, when open.—The circuit courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers, and other pleadings, for issuing and returning meane and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits.

Ewing v. Blight, 1 Phila. Repts. 576.

RULE 2.

Clerk's office.—The clerk's office shall be open, and the clerk shall be in attendance therein, on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course, and applied for, or had by the parties, or their solicitors, in all

causes pending in equity, in pursuance of the rules hereby prescribed.

RULE 3.

Orders, rules, etc.—Any judge of the circuit court, as well in vacation as in term, may, at chambers, or on the rule-days at the clerk's office, make and direct all such interlocutory orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits, in the same manner and with the same effect as the circuit court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and show cause to the contrary at the next rule-day thereafter, unless some other time is assigned by the judge for the hearing.

U. S. v. Flowery, 1 Sprague 109

RULE 4.

Entry of motions, rules, and orders.—All motions, rules, orders, and other proceedings made and directed at chambers, or on rule-days at the clerk's office, whether special or of course, shall be entered by the clerk in an order-book, to be kept at the clerk's office, on the day when they are made and directed; which book shall be open at all office hours to the free inspection of the parties in any suit in equity, and their solicitors. And, except in cases where personal or other notice is specially required or directed, such entry in the order-book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings entered in such order-book, touching any and all the matters in the suits to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city, the judges of the circuit court may, by rule, abridge the time for notice of rules, orders, or other proceedings not requiring personal service on the parties, in their discretion.

New Jersey v. New York, 3 Pet. 461. *U. S. v. Parrot*, 1 McAll. 447; *Bronson v. Kenney*, 3 McLean 180; *McLean v. Lafayette Bk.*, id. 503.

RULE 5.

Motions for process, etc., as of course.—All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees, for filing bills, answers, pleas, demurrers, and other pleadings; for making amendments to bills and answers; for taking bills pro confesso; for filing exceptions, and for other proceedings in the clerk's office which do not, by the rules hereinafter prescribed, require any allowance or order of the court, or of any judge thereof, shall be deemed motions and applications, grantable of course by the clerk of the court. But the same may be suspended, or altered, or rescinded by any judge of the court, upon special cause shown.

Poultney v. City of Lafayette, 12 Pet. 472.

RULE 6.

Motions and orders not grantable of course.—All motions for rules or orders and other proceedings, which are not grantable of course, or without notice, shall, unless a different time be assigned by a judge of the court, be made on a rule-day, and entered in the order-book, and shall be heard at the rule-day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any judge of the court ex parte, and granted, as if not objected to, or refused, in his discretion.

PROCESS.

RULE 7.

Compulsory process.—The process of subpoena shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and, unless otherwise provided in these rules, or specially ordered by the circuit

court, a writ of attachment, and, if the defendant cannot be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

Vattier v. Hinde, 7 Pet. 252; *Herndon v. Ridgeway*, 17 How. 424; *U. S. v. Wayne*, Wall. C. C. 134; *Hollingsworth v. Duane*, Wall. C. C. 141; *Picquet v. Swan*, 5 Mas. 35; *Thompson v. Smith*, 1 Dill. 458.

RULE 8.

Final process.—Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the circuit court in suits at common law in actions of assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds, or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound without further service to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of *non est inventus*, to compel obedience to the decree. [See Rule 92.]

Toland v. Sprague, 12 Pet. 300; *Gwin v. Breedlove*, 2 How. 29; *Griffin v. Thompson*, *id.* 244; *McFarland v. Gwin*, 3 How. 720.

RULE 9.

Writ of assistance.—When any decree or order is for the delivery of possession upon proof made by affidavit of a demand and refusal to obey the decree or order, the

party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

Thompson v. Smith, 1 Dill. 458.

RULE 10.

Parties, how affected.—Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause; and every person, not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party in the cause.

SERVICE OF PROCESS.

RULE 11.

Subpoena, when to issue.—No process of subpoena shall issue from the clerk's office in any suit in equity until the bill is filed in the office.

Toland v. Sprague, 12 Pet. 300; *Ex parte Graham*, 3 Wash. C. C. 456.

RULE 12.

When returnable.—Whenever a bill is filed, the clerk shall issue the process of subpoena thereon, as of course, upon the application of the plaintiff, which shall be returnable into the clerk's office the next rule-day, or the next rule-day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpoena shall be placed a memorandum, that the defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable; otherwise, the bill may be taken pro confesso. Where there are more than one defendant, a writ of subpoena may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife defendants, or a joint subpoena against all the defendants.

DEFTY F. PROC. 34.

RULE 13.

Service, how made.—The service of all subpoenas shall be by a delivery of a copy thereof, by the officer serving the same, to the defendant personally,¹ or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some adult² person who is a member or resident in the family.

¹ The words "or, in case of husband and wife, to the husband personally," were taken out by amendment of May 3d, 1875.

² "Free white" changed to "adult," by amendment of May 3 1875.

Hitner v. Suckley, 2 Wash. C. C. 465; Read v. Consequa, 4 id. 174; Eckert v. Bauert, id. 370; Ward v. Seabry, id. 426; id. 472; Doe v. Johnston, 2 McLean 323; Robinson v. Cathcart, 2 Cranch C. C. 590; Segee v. Thomas, 3 Blatch. 11; Hyslop v. Hoppock, 5 Ben. 533; Jobbins v. Montague, 5 Ben. 429.

RULE 14.

Alias subpoena.—Whenever any subpoena shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpoena, toties quoties, against such defendant, if he shall require it, until due service is made.

RULE 15.

Who to make service.—The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.

U. S. v. Montgomery, 2 Dall. 335; Kennedy v. Brent, 6 Cranch 187; Life & Fire Ins. Co. of N. Y. v. Adams, 9 Pet. 573; Ex parte Hoyt, 13 Pet. 279; U. S. v. Moore, 2 Brock. 317; Wortman v. Conyngham, 1 Pet. C. C. 241; Jobbins v. Montague, 5 Ben. 429.

RULE 16.

Entry on docket on return.—Upon the return of the subpoena as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

Roach v. Hulings, 5 Cranch C. C. 637; Atkins v. Fibre Disintegrating Co., 7 Blatch. 555.

APPEARANCE.**RULE 17.**

Day of.—The appearance-day of the defendant shall be the rule-day to which the subpoena is made returnable, provided he has been served with the process twenty days before that day; otherwise, his appearance-day shall be the next rule-day succeeding the rule-day when the process is returnable.

Entry of.—The appearance of the defendant, either personally or by his solicitor, shall be entered in the order-book on the day thereof by the clerk.

Gracie v. Palmer, 8 Wheat. 699; *Knox v. Summers*, 3 Cranch 496; *Osborn v. Bk. of U. S.*, 9 Wheat. 738; *Shelton v. Tiffin*, 6 How. 163; *Jones v. Andrews*, 10 Wall. 327; *Carrington v. Brent*, 1 McLean 174; *Nelson v. Moon*, 3 McLean 319; *Segee v. Thomas*, 3 Blatch. 11; *Good-year v. Chaffee*, id. 268; *Picquet v. Swan*, 5 Mas. 561; *Virginia & Md. S. N. Co. v. U. S.*, Taney 418; *Kittredge v. Emerson*, 3 Leg. Obs. 166; *Kentucky S. M. Co. v. Day*, 2 Saw. 468.

BILLS TAKEN PRO CONFESSO.**RULE 18.**

Default.—It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a judge of the court, upon motion for that purpose, to file his plea, demurrer, or answer to the bill, in the clerk's office, on the rule-day next succeeding that of entering his appearance. In default thereof, the plaintiff may, at his election, enter an order (as of course) in the order-book, that the bill be taken pro confesso; and thereupon the cause shall be proceeded in ex parte, and the matter of the bill may be decreed by the court at the next ensuing term thereof accordingly, if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant, to compel an answer, and the defendant shall not, when arrested upon such process, be discharged therefrom, unless upon filing his answer, or otherwise complying with such order as the court or a judge thereof may direct, as to pleading to or fully answer-

ing the bill, within a period to be fixed by the court or judge, and undertaking to speed the cause.

Oswald v. New York, 2 Dall. 415; *Young v. Grundy*, 6 Cranch 51; *Pendleton v. Evans*, 4 Wash. C. C. 336; *Boudinot v. Syrumes*, Wall. C. C. 139.

RULE 19.

Decree on default.—When the bill is taken pro confesso, the court may proceed to a decree at the next ensuing term thereof, and such decree rendered shall be deemed absolute, unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct, for the purpose of speeding the cause.

Kemball v. Stewart, 1 McLean 332; *Fellows v. Hall*, 3 id. 281.

FRAME OF BILLS.

RULE 20.

Introductory part.—Every bill, in the introductory part thereof, shall contain the names, places of abode, and citizenship of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows: "To the judges of the circuit court of the United States for the district of —: A. B., of —, and a citizen of the State of —, brings this his bill against C. D., of —, and a citizen of the State of —, and E. F., of —, and a citizen of the State of —. And thereupon your orator complains and says, that," etc.

Kentucky S. M. Co. v. Day, 2 Saw. 468.

RULE 21.

What to omit and what to state.—The plaintiff, in his bill, shall be at liberty to omit, at his option, the part

which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses which the defendant is supposed to intend to set up by way of defense to the bill; also what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative or stating part of his bill, state and avoid, by counter-averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant, by way of defense or excuse, to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction, or a writ of ne exeat regno or any other special order pending the suit, is required, it shall also be specially asked for.

State of Georgia v. Brallsford, 2 Dall. 405; *English v. Foxall*, 2 Pet. 505; *Union Bk. v. Geary*, 5 Pet. 99; *Harrison v. Nixon*, 9 Pet. 483; *Boon v. Chiles*, 10 Pet. 177; *Walden v. Bodley*, 14 Pet. 156; *Hobson v. McArthur*, 16 Pet. 182; *Taylor v. Merchants Fire Ins. Co.*, 9 How. 390; *Washington R. R. v. Bradleys*, 10 Wall. 299; *Wilson v. Graham*, 4 Wash. C. C. 53; *Spooner v. McConnell*, 1 McLean 337; *Dunhan v. The Eaton & H. R. R. Co.*, 1 Bond 492; *Perry v. Corning*, 7 Blatch. 195.

RULE 22.

Parties out of jurisdiction.—If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties, by showing them to be without the jurisdiction of the court, or that they cannot be joined without ousting the jurisdiction of the court as to the other parties. And as to persons who are without the jurisdiction and may properly be made parties, the bill may pray that process may issue to make them parties to the bill if they should come within the jurisdiction.

RULE 23.

Prayer for process.—The prayer for process of subpoena in the bill shall contain the names of all the de-

fendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the court may take order thereon as justice may require, upon the return of the process. If an injunction, or a writ of ne exeat regno or any other special order pending the suit, is asked for in the prayer for relief, that shall be sufficient without repeating the same in the prayer for process.

RULE 24.

Signature of counsel.—Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part that upon the instructions given to him and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

Dwight v. Humphreys, 3 McLean 104; *Roach v. Hulings*, 5 Cranch C. C. 637.

RULE 25.

Taxable costs.—In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness, and directness in the allegations of bills and answers, the regular taxable costs for every bill and answer shall in no case exceed the sum which is allowed in the State court of chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

SCANDAL AND IMPERTINENCE IN BILLS.

RULE 26.

Surplusage.—Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments, in hæc verba, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it does, it may on exceptions be referred to a master by any judge of the court for impertinence or scandal; and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the de-

fendant all his costs in the suit up to that time, unless the court or a judge thereof shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

Gaines v. Chew, 2 How. 619; Oliver v. Platt, 3 How. 333; McLean v. Lafayette Bk., 9 McLean 415; Nourse v. Allen, 4 Blatch. 376; Perry v. Corning, 7 Blatch. 195; Turrell v. Cammerrer, 3 Fish. Pat. Cas. 462; Copen v. Flesher, 1 Bond 440.

RULE 27.

Exceptions, how taken.—No order shall be made by any judge for referring any bill, answer, or pleading, or other matter, or proceeding depending before the court for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule-day after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnecessary delay, procure the master to examine and report for the same on or before the next succeeding rule-day, or the master shall certify that further time is necessary for him to complete the examination.

Oliver v. Platt, 3 How. 333; Nelson v. Hill, 5 How. 127; U. S. v. Sturgess, 1 Paine 525; Surget v. Byers, Hempst. 715.

AMENDMENT OF BILLS.

RULE 28.

As of course.—The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill in any matters whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterwards, such as filling blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point, (as he may do of course) after a copy has been so taken, before any answer or plea, or demurrer to the bill, he shall pay to the defendant the

costs occasioned thereby, and shall, without delay, furnish him a fair copy thereof free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish in like manner, to the defendant, a copy of the whole bill as amended; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

Walden v. Bodley, 14 Pet. 156; *Shields v. Barrow*, 17 How. 130; *Holmes v. Trout*, 1 McLean 1; *Longworth v. Taylor*, id 514; *Copen v. Flesher*, 1 Bond 440; *Peirce v. West*, 3 Wash. C. C. 354; *Read v. Consequa*, 4 id. 175.

RULE 29.

By order of court.—After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any judge of the court to amend his bill on or before the next succeeding rule-day, upon payment of costs or without payment of costs, as the court or a judge thereof may in his discretion direct. But after replication filed, the plaintiff shall not be permitted to withdraw it and to amend his bill, except upon a special order of a judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the judge for speeding the cause.

Wharton v. Lowrey, 2 Dall. 364; *Shields v. Barrow*, 17 How. 130; *Neale v. Neales*, 9 Wall. 1; *Washington R. R. v. Bradleys*, 10 Wall. 299; *Hunt v. Rousmaniere*, 2 Mas. 342; *Ross v. Carpenter*, 6 McLean 382; *Dupont v. Mussy*, 4 Wash. C. C. 128; *Goodyear v. Bourn*, 3 Blatch. 266; *Tufts v. Tufts*, 3 Woodb. & M. 457.

RULE 30.

Order, when abandoned.—If the plaintiff, so obtaining an order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the clerk's office, on or before the next succeeding rule-day, he shall be considered to have abandoned the same, and the cause

shall proceed as if no application for any amendment had been made.

Marshall v. Vicksburg, 15 Wall. 146.

DEMURRERS AND PLEAS.

RULE 31.

When allowed.—No demurrer or plea shall be allowed to be filed to any bill, unless upon a certificate of counsel that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant that it is not interposed for delay; and if a plea, that it is true in point of fact.

Milligan v. Milledge, 3 Cranch 220; *Sims v. Lyle*, 4 Wash. C. C. 301; *Ewing v. Blight*, 3 Wall. jr. 134; *Goodyear v. Toby*, 6 Blatch. 130.

RULE 32.

With leave of court.—The defendant may, at any time before the bill is taken for confessed, or afterward with the leave of the court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part, and answer as to the residue; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea, and explicitly denying the fraud and combination, and the facts on which the charge is founded.

Livingston v. Story, 9 Pet. 632; *S. C.*, 11 Pet. 352; *De Sobry v. Nicholson*, 3 Wall. 423; *Ewing v. Blight*, 3 Wall. jr. 134; *Ferguson v. O'Hara*, 1 Pet. C. C. 493; *Beard v. Bowler*, 2 Bond 14; *Lewis v. Baird*, 3 McLean 56; *Oliver v. Decatur*, 4 Cranch C. C. 458; *Heath v. Erie R. Co.*, 8 Blatch. 347; *Ocean Ins. Co. v. Fields*, 2 Story 59.

RULE 33.

Argument on plea.—The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

U. S. v. Arthur, 5 Cranch 257; *Sprigg v. Bk. of Mt. Pleasant*, 10 Pet. 257; *Rhode Isl. v. Massachusetts*, 14 Pet. 210; *Gorman v. Lenox*, 15 Pet. 115; *Wickliffe v. Owings*, 17 How. 47; *Rogers v. Burlington*,

3 Wall. 661; *Gallagher v. Roberts*, 1 Wash. C. C. 320; *Kirkpatrick v. White*, 4 id. 595; *Goodyear v. Toby*, 6 Blatch. 130; *Parton v. Prang*, 2 Off. Gaz. Pat. 619.

RULE 34.

Costs on demurrer overruled.—If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period, unless the court shall be satisfied that the defendant had good ground in point of law or fact to interpose the same, and it was not interposed vexatiously or for delay. And upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule-day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done; in default whereof, the bill shall be taken against him, pro confesso, and the matter thereof proceeded in and decreed accordingly.

Bk of U. S. v. *White*, 8 Pet. 262; *R. I. v. Massachusetts*, 14 Pet. 210; *Shelton v. Tiffen*, 6 How. 184; *Halderman v. Halderman*, Hempst. 407; *Suydam v. Beals*, 4 McLean 12; *Fellows v. Hall*, 3 id. 487; *Simms v. Lyle*, 4 Wash. C. C. 303; *Pendleton v. Evans*, id. 391.

RULE 35.

Costs on demurrer allowed.—If, upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill upon such terms as it shall deem reasonable.

Hunt v. Rousmaniere, 2 Mas. 342; *Brooks v. Byam*, 2 Story 553; *Webb v. Bowers*, 1 Law Reporter N. S. 84.

RULE 36.

Demurrer, sufficiency of.—No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

RULE 37.

Demurrer and answer to same matter.—No demurrer or plea shall be held bad and overruled upon argu-

ment, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

Ferguson v. O'Harra, 1 Pet. C. C. 493.

RULE 38.

Admission by failure to reply.—If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument, on the rule-day when the same is filed, or on the next succeeding rule-day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course, unless a judge of the court shall allow him further time for the purpose.

Hughes v. Blake, 6 Wheat. 453; *Poultney v. City of La Fayette*, 3 How. 81; *Hughes v. U. S.*, 4 Wall. 232; *Parton v. Prang*, 2 Off. Gaz. Pat. 619.

ANSWERS.

RULE 39.

Sufficiency of.—The rule, that if a defendant submits to answer he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases by answer to insist upon all matters of defense (not being matters of abatement, or to the character of the parties, or matters of form) in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar, and an answer in support of such plea, touching the matters set forth in the bill, to avoid or repel the bar or defense. Thus, for example, a bona fide purchaser for a valuable consideration, without notice, may set up that defense by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

Field v. Holland, 6 Oranch 8; *Russell v. Clark*, 7 Oranch 69; *Clark v. Van Reimsdyk*, 9 Oranch 153; *Leeds v. Mar. Ins. Co.*, 2 Wheat. 380; *Lenox v. Prout*, 3 Wheat. 520; *Osborn v. Bk. of U. S.*,

9 Wheat. 738; Union Bk. v. Geary, 5 Pet. 99; Livingston v. Story, 9 Pet. 632; S. C., 11 Pet. 351; Boon v. Chiles, 10 Pet. 177; Clarke v. White, 12 Pet. 178; Bk. of U. S. v. Beverly, 1 How. 134; Carpenter v. Prov. Wash. Ins. Co., 4 How. 185; Wickliffe v. Owings, 17 How. 47; Halderman v. Halderman, Hempst. 407; Van Reimsdyk v. Kane, 1 Gall. 630; Ferguson v. O'Harra, 1 Pet. C. C. 493; Wood v. Mann, 1 Sum. 578; Higbie v. Hopkins, 1 Wash. C. C. 230; Read v. Consequa, 4 Wash. 174; Bailey v. Wright, 2 Bond, 181; Randall v. Phillips, 3 Mas. 378; The Russell & E. Manf. Co. v. Mallory, 5 Fish. Pat. Cas. 632; Bailey Wash. Mach. Co. v. Young, 12 Blatchf. 199.

RULE 40.

A defendant shall not be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

December Term, 1850.

Ordered, That the fortieth rule, heretofore adopted and promulgated by this court as one of the rules of practice in suits in equity in the circuit courts, be, and the same is hereby, repealed and annulled. And it shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so, to obtain a discovery.

Young v. Grundy, 6 Granch 51; Treadwell v. Cleaveland, 3 McLean 283.

Amended December Term, 1850, 10 How. v.

RULE 41.

Interrogatories to be numbered.—The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, etc.; and the interrogatories which each defendant is required to answer shall be specified in a note at the foot of the bill, in the form or to the effect following, that is to say: "The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3, etc."; and the office

copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

Amended May 6, 1872, 13 Wall. xi. See *Parton v. Prang*, 2 Off. Gaz. Pat. 619.

AMENDMENT TO 41st EQUITY RULE.

Answer, when not evidence.—If the complainant, in his bill, shall waive an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant, though under oath, except such part thereof as shall be directly responsive to such interrogatories, shall not be evidence in his favor, unless the cause be set down for hearing on bill and answer only; but may nevertheless be used as an affidavit, with the same effect as heretofore, on a motion to grant or dissolve an injunction, or on any other incidental motion in the cause; but this shall not prevent a defendant from becoming a witness in his own behalf under section 3 (a) of the act of Congress of July 2d, 1864.

December Term, 1871; *Bailey v. Young*, 12 Blatchf. 200.

RULE 42.

Specified interrogatories, part of bill.—The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note after the bill is filed, shall be considered and treated as an amendment of the bill.

RULE 43.

Form, preceding interrogating part.—Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words "To the end, therefore," there shall hereafter be used words in the form or to the effect following: "To the end, therefore, that

(a) Revised Statutes, § 853.

DISTY F. PROC. 25.

the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer; that is to say—

“1. Whether, etc.

“2. Whether, etc.”

Langdon v. Goddard, 3 Story 13.

RULE 44.

What interrogatories need not be answered.—A defendant shall be at liberty, by answer, to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill, from which he might have protected himself by demurrer.

RULE 45.

Special replication.—No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same, with or without the payment of costs, as the court, or a judge thereof, may in his discretion direct.

Hughes v. Blake, 6 Wheat. 453; R. I. v. Mass., 14 Pet. 210; Taylor v. Benham, 5 How. 263; Clements v. Moore, 6 Wall. 299; Peirce v. West, 1 Pet. C. C. 351; Wilson v. Stolley, 4 McLean 275; Dupont v. Mussy, 4 Wash. C. C. 128; Coleman v. Martin, 6 Blatch. 291.

RULE 46.

New or supplemental answer.—In every case where an amendment shall be made after answer filed, the defendant shall put in a new or supplemental answer, on or before the next succeeding rule-day after that on which the amendment or amended bill is filed, unless the time is

enlarged or otherwise ordered by a judge of the court; and upon his default the like proceedings may be had as in cases of an omission to put in an answer.

Morehead v. Jones, 3 Wall. jr. 306.

PARTIES TO BILLS.

RULE 47.

Proper, when not necessary parties.—In all cases where it shall appear to the court that persons, who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may in their discretion proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

Riddle v. Mandeville, 5 Cranch 322; *Russell v. Clark*, 7 Cranch 69; *Morgan v. Morgan*, 2 Wheat. 290; *U. S. v. Howland*, 4 Wheat. 108; *Marshall v. Beverly*, 5 Wheat. 313; *Conn. v. Penn.*, 5 Wheat. 424; *Wormley v. Wormley*, 8 Wheat. 421; *Carneal v. Banks*, 10 Wheat. 181; *Elmendorf v. Taylor*, id. 152; *De Wolf v. Johnson*, id. 367; *Harding v. Handy*, 11 Wheat. 103; *Finley v. Bk of U. S.*, id. 304; *Mallow v. Hinde*, 12 Wheat. 193; *Mechs. Bk v. Seton*, 1 Pet. 299; *Dandridge v. Washington*, 2 Pet. 370; *Hunt v. Wickliffe*, id. 215; *Conolly v. Taylor*, id. 556; *Caldwell v. Taggart*, 4 Pet. 190; *Vattler v. Hinde*, 7 Pet. 252; *Boon v. Chiles*, 8 Pet. 532; *Coiron v. Millaudon*, 19 How. 115; *Barney v. Baltimore City*, 6 Wall. 280; *Clark v. Reyburn*, 8 Wall. 318; *French v. Shoemaker*, 14 Wall. 314; *Bank v. Carrollton R. R.*, 11 Wall. 624; *Traders' Bank v. Campbell*, 14 Wall. 87; *Ribon v. R. R. Cos.*, 16 Wall. 446; *Moore v. Huntington*, 17 Wall. 417; *Hoxie v. Carr*, 1 Sum. 173; *Van Reimsdyk v. Kane*, 1 Gall. 371; *Harrison v. Urann*, 1 Story 64; *Joy v. Wirtz*, 1 Wash. C. C. 517; *Harrison v. Rowan*, 4 id. 202; *The Cole S. M. Co. v. Virginia and G. H. Wat. Co.*, 1 Saw. 470; *West v. Randall*, 2 Mas. 181; *Abbot v. American H. R. Co.*, 4 Blatch. 489; *Bunce v. Gallagher*, 5 id. 481; *Florence S. M. Co. v. Singer Manf. Co.*, 8 id. 113; *Gray v. Larriamore*, 2 Abb. U. S. 542; *Young v. Cushing*, 4 Biss. 456.

RULE 48.

Parties too numerous.—Where the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the court in its discretion may dispense with

making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

Mandeville v. Riggs, 2 Pet. 482; *West v. Randall*, 2 Mas. 181.

RULE 49.

Trustees, etc., as parties.—In all suits concerning real estate, which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, or the proceeds, or the rents and profits, in the same manner, and to the same extent, as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

Milligan v. Milledge, 3 Cranch 220; *Simms v. Guthrie*, 9 id. 19; *Kerr v. Watts*, 6 Wheat. 559; *Potter v. Gardner*, 12 Wheat. 498; *Greenleaf v. Queen*, 1 Pet. 138; *Hook v. Payne*, 14 Wall. 252.

RULE 50.

Heir-at-law, when a necessary party.—In suits to execute the trusts of a will, it shall not be necessary to make the heir-at-law a party; but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him.

Greenleaf v. Queen, 1 Pet. 138.

RULE 51.

Joint debtors.—In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court, as parties to a suit concerning such demand,

all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

RULE 52.

Defect of parties suggested in answer.—Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order-book, in the form or to the effect following, that is to say: "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties. But the court, if it thinks fit, shall be at liberty to dismiss the bill:

Greenleaf v. Queen, 1 Pet. 149; *Story v. Livingston*, 13 Pet. 360; *Harrison v. Rowan*, 4 Wash. C. O. 202.

RULE 53.

Defect of parties suggested at hearing.—If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties not having by plea or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the court (if it shall think fit) shall be at liberty to make a decree saving the rights of the absent parties.

Mechanics Bk. v. Seton, 1 Pet. 306; *Story v. Livingston*, 13 Pet. 358; *Segee v. Thomas*, 3 Blatch. 11; *Wallace v. Holmes*, 9 Blatch. 65.

NOMINAL PARTIES TO BILLS.

RULE 54.

When party need not appear.—Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party,

upon service of the subpoena upon him, need not appear and answer the bill, unless the plaintiff specially requires him so to do by the prayer of his bill; but he may appear and answer, at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer, he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.

Wormly v. Wormly, 8 Wheat. 421; *Mechanics Bk. v. Seton*, 1 Pet. 310; *Joy v. Wirtz*, 1 Wash. C. C. 517; *Young v. Pott*, 4 Wash. C. C. 521.

RULE 55.

Injunction, when granted as of course.—Whenever an injunction is asked for by the bill to stay proceedings at law, if the defendant do not enter his appearance and plead, demur, or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled as of course, upon motion without notice, to such injunction. But special injunctions shall be grantable only upon due notice to the other party by the court in term, or by a judge thereof in vacation, after a hearing, which may be *ex parte*, if the adverse party does not appear at the time and place ordered. In every case where an injunction, either the common injunction or a special injunction, is awarded in vacation, it shall, unless previously dissolved by the judge granting the same, continue until the next term of the court, or until it is dissolved by some other order of the court.

Simms v. Guthrie, 9 Cranch 19; *Dunn v. Clarke*, 8 Pet. 1; *Worcester v. Truman*, 1 McLean 483; *Gray v. Chicago etc. R. R. Co.*, 1 Woolw. 63; *Read v. Consequa*, 4 Wash. C. C. 174; *Marsh v. Bennett*, 5 McLean 117.

BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

RULE 56.

Bill of revivor—when proper.—Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the

circumstances of the case may require, filed by the proper parties entitled to revive the same, which bill may be filed in the clerk's office at any time; and upon suggestion of the facts, the proper process of subpoena shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule day which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

Vattier v. Hinde, 7 Pet. 252; *Kennedy v. State Bk. of Georgia*, 8 How. 586; *Clarke v. Matthewson*, 2 Sum. 262; *Nartt v. Clarke*, Olc. 316.

RULE 57.

Supplemental bill, when proper.—Whenever any suit in equity shall become defective, from any event happening after the filing of the bill, (as, for example, by change of interest in the parties) or for any other reason, a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any judge of the court on any rule-day, upon proper cause shown, and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto, on the next succeeding rule-day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a judge of the court.

Kennedy v. State Bk. of Georgia, 8 How. 586; *Jenkins v. Eldredge*, 3 Story 299; *Parkhurst v. Kinsman*, 2 Blatch. 72; *Nevitt v. Clarke*, Olc. 316.

RULE 58.

What need not be set forth.—It shall not be necessary in any bill of revivor, or supplemental bill, to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

See *Nevitt v. Clarke*, Olc. 316.

ANSWERS.

RULE 59.

Verification, before whom.—Every defendant may swear to his answer before any justice or judge of any

court of the United States, or before any commissioner appointed by any circuit court to take testimony or depositions, or before any master in chancery appointed by any circuit court, or before any judge of any court of a State or Territory.

Read v. Consequa, 4 Wash. C. C. 335; *Herman v. Herman*, id. 555; *Holbrook v. Black*, 8 Law Reporter N. S. 89.

AMENDMENT OF ANSWERS.

RULE 60.

Wherein amendable.—After an answer is put in, it may be amended as of course, in any matter of form, or by filling up a blank, or correcting a date, or reference to a document or other small matter, and be resworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication, or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defenses, or qualifying or altering the original statements, except by special leave of the court or of a judge thereof, upon motion and cause shown after due notice to the adverse party, supported, if required, by affidavit. And in every case where leave is so granted, the court, or the judge granting the same, may, in his discretion, require that the same be separately engrossed and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

Rhode Isl. v. Massachusetts, 13 Pet. 23; *Walden v. Bodley*, 14 id. 156; *Caster v. Wood*, 1 Bald. 289; *India Rub. C. Co. v. Phelps*, 8 Blatch. 85; *Gier v. Gregg*, 4 McLean 202.

EXCEPTIONS TO ANSWERS.

RULE 61.

When to be taken.—After an answer is filed on any rule-day, the plaintiff shall be allowed until the next succeeding rule-day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the court or a judge thereof; and if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

Hardeman v. Harris, 7 How. 726; *Brown v. Pierce*, 7 Wall. 205; *Read v. Consequa*, 4 Wash. C. C. 335; *Brooks v. Byam*, 1 Story 296; *Brent v. Venable*, 3 Cranch C. C. 227; *Patriotic Bk. v. Bk. of Washington*, 5 id. 602; *Chapman v. School Dist. No. 1*, Deady 108; *Griswold v. Hill*, 1 Paine 390.

RULE 62.

Separate answers, costs on.—When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had by two or more of the defendants separately, costs shall not be allowed for such separate answers or other proceedings, unless a master, upon reference to him, shall certify that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

RULE 63.

When to be set down for hearing.—Where exceptions shall be filed to the answer for insufficiency within the period prescribed by these rules, if the defendant shall not submit to the same and file an amended answer on the next succeeding rule-day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule-day thereafter before a judge of the court, and shall enter, as of course, in the order-book, an order for that purpose. And if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient: *Provided, however*, that the court, or any judge thereof, may, for good cause shown, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

U. S. v. Pacheco, 20 How. 261.

RULE 64.

Answer on allowance of exceptions.—If at the hearing the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto on the next succeeding rule-day; otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he may have a writ of attachment to

compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court, or of a judge thereof, upon his putting in such answer and complying with such other terms as the court or judge may direct.

RULE 65.

Exceptions overruled, costs.—If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the court, or the judge thereof, at the hearing upon the exceptions.

REPLICATION AND ISSUE.

RULE 66.

When to be filed.—Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto on or before the next succeeding rule-day thereafter; and in all cases where the general replication is filed the cause shall be deemed to all intents and purposes at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the court, or a judge thereof, shall, upon motion for cause shown, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

Hughes v. Blake, 6 Wheat. 453; Vattier v. Hinde, 7 Pet. 252; Peirce v. West, 1 Pet. O. C. 351; Coleman v. Martin, 6 Blatch. 291, Dupont v. Mussy, 4 Wash. O. C. 128; Coleman v. Martin, 6 Blatch. 291; Robinson v. Satterlee, 7 Pacif. L. Rep. 75; S. C., 3 Sawyer.

TESTIMONY—HOW TAKEN.

RULE 67.

Commissions, when taken out.—After the cause is at issue, commissions to take testimony may be taken out

in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party taking out the same in the clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross-interrogatories are filed at the expiration of the time, the commission may issue *ex parte*.

Who to name commissioners.—In all cases the commissioner or commissioners shall be named by the court, or by a judge thereof. If the parties shall so agree the testimony may be taken upon oral interrogatories by the parties or their agents, without filing any written interrogatories. Ordered, (a) that the 67th rule be so amended as to allow the presiding judge of any court exercising jurisdiction, either in term time or in vacation, to vest in the clerk of said court general power to name commissioners to take testimony in like manner that the court or judge thereof can now do by the said sixty-seventh rule.

Notice required.—Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court, the examiner to be furnished with a copy of the bill and answer, if any; and such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination, and re-examination, and which shall be conducted, as near as may be, in the mode now used in common-law courts. The depositions taken upon such oral examination shall be taken down in writing by the examiner in the form of narrative, unless he determines the examination shall be by question and answer in special instances; and when completed, shall be read over to the witness and signed by him in the presence of the parties or counsel, or such of them as may attend: *Provided*, if the witness shall refuse to sign the said deposition, then the examiner shall sign the same; and the examiner may upon all examinations state any special matters to the court as he shall think fit; and any question or questions which may be objected to shall be noted by the

(a) Dec. Term, 1854.

examiner upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the questions; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

Compulsory attendance of witnesses.—In case of refusal of witnesses to attend, to be sworn, or to answer any question put by the examiner or by counsel or solicitor, the same practice shall be adopted as is now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

Notice of time and place.—Notice shall be given, by the respective counsel or solicitors, to the opposite counsel or solicitors, or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

Transmission of deposition.—When the examination of witnesses before the examiner is concluded, the original deposition, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the court, to be there filed of record in the same mode as prescribed in the thirtieth section of act of Congress, September 24th, 1789. (a)

Testimony, how taken.—Testimony may be taken on commission in the usual way by written interrogatories, and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons satisfactory to the court or judge.

Dec. Term, 1861.

Court may assign the time.—Where the evidence to be adduced in a cause is to be taken orally, as provided in the order passed at the December Term, 1861, amending the 67th General Rule, the court may, on motion of either party, assign a time within which the complainant shall take his evidence in support of the bill, and a time thereafter within which the defendant shall take his evidence in defense, and a time thereafter within which the complainant shall take his evidence in reply; and no further evidence shall be taken in the cause unless by agreement

(a) See Revised Statutes, § 865.

of the parties, or by leave of court first obtained on motion for cause shown.

Dec. Term, 1869.

Amended, December Term, 1854, 17 How. vii, and December Term, 1861, 1 Black 6, and December Term, 1869, 9 Wall. vii. When authorized, *Bavert v. Day*, 3 Wash. C. C. 243; *Boudereau v. Montgomery*, 4 Wash. C. C. 186; *Sickles v. Gloucester*, 3 Wall. jr. 186; *Bronson v. La Crosse and M. R. R.*, 9 Am. Law Reg. 350; *Read v. Bertram*, 4 Wash. C. C. 558; *Buckingham v. Burgess*, 3 McLean 368; *De Butts v. Bacon*, 1 Cranch C. C. 569. Cross interrogatories, *Cocker v. Franklin H. & B. Co.*, 1 Story 169; *Gilpin v. Consequa*, 3 Wash. C. C. 184; *Gass v. Stinson*, 3 Sum. 98. Each interrogatory to be separately answered, *Ketland v. Bissett*, 1 Wash. C. C. 144. Hypothetical interrogatories need not be answered, *Bell v. Davidson*, 3 Wash. C. C. 328. Notice, *Dodge v. Israel*, 4 Wash. C. C. 323; *Rhodes v. Selin*, id. 715. Authority to be strictly pursued, *Armstrong v. Brown*, 1 Wash. C. C. 43; *Munns v. Dupont*, 3 id. 31; *Lonsdale v. Brown*, id. 404; *Willings v. Consequa*, 1 Pet. C. C. 301. Authentication, *Pettibone v. Derringer*, 4 Wash. C. C. 215.

RULE 68.

Testimony by deposition after issue.—Testimony may also be taken in the cause, after it is at issue, by deposition, according to the acts of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission or by a new deposition taken under the acts of Congress, if a court or a judge thereof shall, under all the circumstances, deem it reasonable.

De Butts v. Bacon, 1 Cranch C. C. 569.

RULE 69.

Time allowed.—Three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the court or a judge thereof shall, upon special cause shown by either party, enlarge the time; and no testimony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions, containing the testimony, into the clerk's office, publication thereof may be ordered in the clerk's office, by any judge of the court,

upon due notice to the parties, or it may be enlarged, as he may deem reasonable under all the circumstances. But, by consent of the parties, publication of the testimony may at any time pass in the clerk's office, such consent being in writing, and a copy thereof entered in the order-books, or indorsed upon the deposition or testimony.

Dec. Term, 1869.

Ingle v. Jones, 9 Wall. 486; *Wood v. Mann*, 2 Sum. 316; *Gass v. Stinson*, id. 605; *Gilbert v. Van Arman*, U. S. C. C. for Eastern Dist. of Mich., 2 Am. Law. T. N. S. 46.

TESTIMONY DE BENE ESSE.



RULE 70.

When may be taken—Notice.—After any bill filed, and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged and infirm, or going out of the country, or that any of them is a single witness to a material fact, the clerk of the court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners, as a judge of the court may direct, to take the examination of such witness or witnesses *de bene esse* upon giving due notice to the adverse party of the time and place of taking his testimony.

FORM OF THE LAST INTERROGATORY.

RULE 71.

Written interrogatories.—The last interrogatory in the written interrogatories to take testimony now commonly in use, shall in the future be altered, and stated in substance thus: "Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

Richardson v. Golden, 3 Wash. C. C. 109; *Dodge v. Israel*, 4 id. 323; *Rhoades v. Selen*, id. 715.

CROSS-BILL.**RULE 72.**

Defendant to answer original bill.—Where a defendant in equity files a cross-bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto, before the original plaintiff shall be compellable to answer the cross-bill. The answer of the original plaintiff to such cross-bill may be read and used by the party filing the cross-bill at the hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

Carnochan v. Christie, 11 Wheat. 446; *Shields v. Barrow*, 17 How. 131; *Rubber Co. v. Goodyear*, 9 Wall. 807; *Cross v. De Valle*, 1 Wall. 1; *Bronson v. La Crosse & M. R. R. Co.*, 2 Wall. 283; *Allen v. Allen*, Hempst. 58; *Young v. Pott*, 4 Wash. C. C. 521.

REFERENCE TO AND PROCEEDINGS BEFORE MASTERS.**RULE 73.**

Account of personal estate.—Every decree for an account of the personal estate of a testator or intestate shall contain a direction to the master, to whom it is referred to take the same, to inquire and state to the court what parts, if any, of such personal estate are outstanding or undisposed of, unless the court shall otherwise direct.

Field v. Holland, 6 Cranch 8; *St. Colombe v. U. S.*, 7 Pet. 625; *Story v. Livingston*, 13 Pet. 359; *Kelsey v. Hobby*, 16 Pet. 278; *Pendleton v. Evans*, 4 Wash. C. C. 391; *Loring v. Marsh*, 2 Cliff. 312.

RULE 74.

Reference, when to be laid before master.—Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance, or for whose benefit, the reference is made, shall cause the same to be presented to the master for a hearing on or before the next rule-day succeeding the time when the reference was made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be

had before the master, at the costs of the party procuring the reference.

RULE 75.

Duty of master.—Upon every such reference it shall be the duty of the master, as soon as he reasonably can, after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the court, or a judge thereof, for an order to the master to speed the proceedings, and to make his report, and to certify to the court or judge the reasons for any delay.

RULE 76.

Report, what need not contain.—In the reports made by the master to the court no part of any state of facts, charge, affidavit, deposition, examination, or answer brought in or used before them shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer shall be identified, specified, and referred to, so as to inform the court what state of facts, charge, affidavit, deposition, examination, or answer were so brought in or used.

Harding v. Handy, 11 Wheat. 103; *Kelsey v. Hobby*, 16 Pet. 269.

RULE 77.

Proceedings before master.—The master shall regulate all the proceedings in every hearing before him, upon every such reference; and he shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and

other documents applicable thereto ; and also to examine on oath, *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the clerk's office, or by deposition, according to the acts of Congress, or otherwise, as hereinafter provided ; and also to direct the mode in which the matters requiring evidence shall be proved before him ; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.

Harding v. Handy, 11 Wheat. 103.

RULE 78.

Witnesses, how summoned.—Witnesses who live within the district may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpoena in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court ; and if any witness shall refuse to appear or to give evidence, it shall be deemed a contempt of the court, which, being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court. But nothing herein contained shall prevent the examination of witnesses *viva voce* when produced in open court, if the court shall, in its discretion, deem it advisable.

Story v. Livingston, 13 Pet. 359 ; *Gass v. Stinson*, 2 Sum. 605 ; *Jenkins v. Eldredge*, 3 Story 300.

RULE 79.

Accounts, production, and examination of party.—All parties accounting before a master shall bring in

their respective accounts in the form of debtor and creditor ; and any of the other parties who shall not be satisfied with the accounts so brought in shall be at liberty to examine the accounting party, *viva voce*, or upon interrogatories in the master's office, or by deposition, as the master shall direct.

RULE 80.

Affidavits, what used.—All affidavits, depositions, and documents which have been previously made, read, or used in the court, upon any proceeding in any cause or matter, may be used before the master.

RULE 81.

Examination of creditor or claimant.—The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examinations shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court, if necessary.

RULE 82.

Appointment of masters, compensation.—The circuit courts may appoint standing masters in chancery in their respective districts, both the judges concurring in the appointment; and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master in chancery for his services in any particular case, shall be fixed by the circuit court in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation ; but when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party who is ordered to pay

the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

Doughty v. The West B. & C. Manf. Co., 8 Blatch. 107.

EXCEPTIONS TO REPORT OF MASTER.

RULE 83.

When may be taken.—The master, as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk in the order-book. The parties shall have one month from the time of filing the report to file exceptions thereto; and if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule-day after the month is expired. If exceptions are filed, they shall stand for hearing before the court, if the court is then in session; or, if not, then at the next sitting of the court which shall be held thereafter by adjournment or otherwise.

Chappedelaine v. Dechenaux, 4 Cranch 206; *Harding v. Handy*, 11 Wheat. 103; *Story v. Livingston*, 3 Pet. 359; *Oliver v. Piatt*, 3 How. 333; *Brockett v. Brockett*, id. 691; *Foster v. Goddard*, 1 Black 506; *New Orleans v. Gaines*, 15 Wall. 624; *Dexter v. Arnold*, 2 Sum. 108; *Coates v. Muse*, 1 Brock 529; *The Troy Iron & N. Factory*, 6 Blatch. 828; *Greene v. Bishop*, 1 Cliff. 186.

RULE 84.

Costs on exceptions.—And in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay costs to the other party, and for every exception allowed shall be entitled to costs—the costs to be fixed in each case by the court, by a standing rule of the circuit court.

DECREES.

RULE 85.

Correction of clerical mistakes.—Clerical mistakes in decrees, or decretal orders, or errors arising from any accidental slip or omission, may, at any time before an

actual enrollment thereof, be corrected by order of the court or a judge thereof, upon petition, without the form or expense of a rehearing.

Dexter v. Arnold, 5 Mas. 303.

RULE 86.

Not contain pleadings.—In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: " [Here insert the decree or order.]

Whiting v. Bk. of U. S., 13 Pet. 6; Putnam v. Day, 8 Leg. Gaz. 67

GUARDIANS AND PROCHEIN AMIS.

RULE 87.

How appointed.—Guardians ad litem to defend a suit may be appointed by the court, or by any judge thereof, for infants or other persons who are under guardianship, or otherwise incapable to sue for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their prochein ami; subject, however, to such orders as the court may direct for the protection of infants and other persons.

Bk. of U. S. v. Ritchie, 8 Pet. 128.

REHEARING.

RULE 88.

Rehearing petition, what to contain.—Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party, or by some other person. No rehearing shall be

granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.

Whiting v. Bk. of U. S., 13 Pet. 6; *Daniel v. Mitchell*, 1 Story 198; *Baker v. Whiting*, id. 218; *Jenkins v. Eldredge*, 3 Story 299; *Emerson v. Davies*, 1 Woodb. & M. 21; *Bentley v. Phelps*, 3 id. 403; *Tufts v. Tufts*, id. 426; *Hunter v. Town of Marlboro'*, 2 id. 168; *Scott v. Blaine*, 1 Bald. 287; *Clarke v. Threlkeld*, 2 Oranch C. C. 408; *Hitchcock v. Tremaine*, 5 Fish. Pat. Cas. 537.

RULE 89.

Rules may be made by circuit courts.—The circuit courts (both judges concurring therein) may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

Boyle v. Zacharie, 6 Pet. 648; *Poultney v. Lafayette*, 12 Pet. 472; *Bk. of U. S. v. White*, 8 Pet. 262; *Phil. & T. R. R. v. Stimpson*, 14 Pet. 448; *Badger v. Badger*, 1 Cliff. 241; *Russell v. McLellan*, 3 Woodb. & M. 157.

RULE 90.

Practice.—In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit court shall be regulated by the present practice of the High Court of Chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local conveniences of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

Boyle v. Zacharie, 6 Pet. 648; *Livingston v. Storey*, 9 Pet. 632, 13 Pet. 359; *R. I. v. Mass.*, 14 Pet. 210; *Emerson v. Davies*, 1 Woodb. & M. 21; *Smith v. Burnham*, 2 Sum. 612; *Pomeroy v. Marvin*, 2 Paine 476; *Goodyear v. Prov. R. Co.*, 2 Cliff. 351.

RULE 91.

Affirmation equivalent to oath.—Whenever, under these rules, an oath is or may be required to be taken, the

party may, if conscientiously scrupulous of taking an oath, in lieu thereof, make solemn affirmation to the truth of the facts stated by him.

Haight v. Prop. of Morris Aqueduct, 4 Wash. C. C. 601.

RULE 92.

Decree in foreclosure suits.—In suits in equity for the foreclosure of mortgages in the circuit courts of the United States, or in any court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the 8th rule of this court regulating the equity practice, where the decree is solely for the payment of money.

December Term, 1863.

Promulgated 18th April, 1864, 1 Wall. 7; *Pomeroy v. State Bk. of Indiana*, 1 Wall. 592.

RULES OF PRACTICE
FOR THE
COURTS OF THE UNITED STATES
IN
ADMIRALTY AND MARITIME JURISDICTION, ON THE IN-
STANCE SIDE OF THE COURT, IN PURSUANCE OF
THE ACT OF THE TWENTY-THIRD OF
AUGUST, 1842, CHAPTER 188.

RULE 1.

Process, issue and service of.—No mesne process shall issue from the district courts in any civil cause of admiralty and maritime jurisdiction until the libel, or libel of information, shall be filed in the clerk's office from which such process is to issue. All process shall be served by the marshal, or by his deputy, or where he or they are interested, by some discreet and disinterested person appointed by the court.

U. S. v. Schooner Charles, 1 Brook. 382.

RULE 2.

In suits in personam, nature of.—In suits in personam the mesne process may be by a simple warrant of arrest of the person of the defendant in the nature of a *capias*, or by a warrant of arrest of the person of the defendant, with a clause therein that, if he cannot be found, to attach his goods and chattels to the amount sued for; or if such property cannot be found, to attach his credits

and effects to the amount sued for in the hands of the garnishees named therein; or by a simple monition, in the nature of a summons to appear and answer to the suit, as the libellant shall, in his libel or information, pray for or elect.

Manro v. Aldmeida, 10 Wheat. 473; *McGrath v. Candalero*, Boe 64; *North v. Brig Eagle*, id. 78; *Bouysson v. Miller*, id. 186.

RULE 3.

Bails, summary process.—In all suits in personam where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the court to which the process is returnable, or in any appellate court. And upon such bond or stipulation summary process of execution may and shall be issued against the principal and sureties by the court to which such process is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

Bingham v. Wilkins, Crabb 50; *U. S. v. Little Charles*, 1 Brock. 332; *Gaines v. Travis*, Abb. Adm. 422; *Gardner v. Isaacson*, id. 141.

RULE 4.

Attachment, when may be dissolved.—In all suits in personam where goods and chattels, or credits and effects, are attached under such warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable, upon the defendant, whose property is so attached, giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court; and upon such bond or stipulation summary process of execution shall and may be issued against the principal and sureties by the court to which such warrant is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

RULE 5.

Bonds or stipulations.—Bonds, or stipulations in admiralty suits, may be given and taken in open court, or at chambers, or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or any commissioner of the United States authorized by law to take bail and affidavits in civil cases.

Amended, May 6th, 1872, 13 Wall. xiv. *The Martha*, Blatch. & H. 151; *The Infanta*, Abb. Adm. 327; *Sawyer v. Oakman*, 11 Blatch. 65.

RULE 6.

Bail, reduction—New sureties.—In all suits in personam where bail is taken the court may, upon motion, for due cause shown, reduce the amount of the sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the court to be given, upon motion and due proof thereof.

RULE 7.

Warrant of arrest, when may issue.—In suits in personam no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the court, upon affidavit or other proper proof, showing the propriety thereof.

Marshall v. Bazin, 7 N. Y. Leg. Obs. 342.

RULE 8.

Ship's tackle, etc., possession, how obtained.—In all suits in rem against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances are in the possession or custody of any third person, the court may, after a due monition to such third person, and a hearing

of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the marshal or other proper officer, if, upon the hearing, the same is required by law and justice.

RULE 9.

Cases of seizure, process in.—In all cases of seizure, and in other suits and proceedings in rem, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession for safe custody, and shall cause public notice thereof, and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the district court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct.

Certain Logs of Mahogany, 2 Sum. 589; Poland v. Brig Spartan, 1 Ware 134; Ship Robert Fulton, 1 Paine 620.

RULE 10.

Perishable goods.—In all cases where any goods or other things are arrested, if the same are perishable, or are liable to deterioration, decay, or injury by being detained in custody pending the suit, the court may, upon the application of either party, in its discretion, order the same or so much thereof to be sold as shall be perishable or liable to depreciation, decay, or injury; and the proceeds, or so much thereof as shall be a full security to satisfy in decree, to be brought into court to abide the event of the suit; or the court may, upon the application of the claimant, order a delivery thereof to him, upon a due appraisement to be had under its direction, either upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties in such sum as the court shall direct, to abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervenes, as the one or the other course shall be ordered by the court.

The Nathaniel Hooper, 3 Sum. 542; The Cheshire, Blatch. Pr. Cas. 165; The Ella Warley, id. 213; Jennings v. Carson, 4 Cranch 2.

RULE 11.

Ship, delivery to claimant.—In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him, upon a due appraisement to be had, under the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court, or otherwise disposed of, as it may deem most for the benefit of all concerned.

Ship Virgin, 8 Pet. 538.

RULE 12.

Suits by material men.—In all suits by material men for supplies or repairs, or other necessities, the libellant may proceed against the ship and freight in rem, or against the master or owner alone in personam.

Promulgated December Term, 1844; Amended 1st May, 1859, 21 How. iv, and 6th May, 1872, 13 Wall. xiv; The Aurora, 1 Wheat. 105; The General Smith, 4 Wheat. 438; The St. Jago de Cuba, 9 Wheat. 409; Ramsay v. Allegre, 12 Wheat. 611; Peyroux v. Howard, 7 Pet. 824; Ship Virgin, 8 Pet. 538; N. J. S. & V. Co. v. Merchants' Bk., 6 How. 390; Maguire v. Card, 21 How. 248; The Nassau, 4 Wall. 634; The Maggie Hammond, 9 Wall. 435; The Grapeshot, id. 129; The Guy, id. 758; The Patapsco, 13 Wall. 329; The Steamer St. Lawrence, 1 Black 522; The Robert Fulton, 1 Paine 620; Philips v. The T. Scatterwood, Gilp. 1; A New Brig, id. 473; Schooner Marion, 1 Story 68; Barque Chusan, 2 id. 456; The Jerusalem, 2 Gall. 345; Zane v. Brig President, 4 Wash. C. C. 453; The Levi Dearborn, 4 Hall's Am. L. J. 88; The Nestor, 1 Sum. 73; Pritchard v. The Lady Horatia, Beo 167; The Ocean Queen, 6 Blatch. 24; Wolf v. The Selt, 17 Int. Rev. Rec. 22; The Selt, 3 Biss. 344; The Kate Tremaine, 5 Ben. 64; Gill v. The Continental, 8 West. Jur. 232; Re Kirkland, 12 Am. L. Reg. 300; The Circassian, id. 291; 5 Am. Law T. 482; The Augusta, id. 495; The Asa R. Swift, 1 Newb. 553; The J. F. Spencer, 5 Ben. 151; Hazlett v. The Enterprise, 17 Int. Rev. Rec. 68; The Tug Champion, 7 Chicago L. News 1; Wilson v. Bell, 6 Chicago L. News 261.

The Circassian, 11 Blatchf. 472; The Lottawana, 21 Wall. 558; Ship Edith, 11 Blatchf. 451.

RULE 13.

Suits for mariners' wages.—In all suits for mariners' wages the libellant may proceed against the ship, freight, and master, or against the ship and freight, or against the owner or the master alone in personam.

St. Jago de Cuba, 9 Wheat. 409; Sheppard v. Taylor, 5 Pet. 675; Steamboat Orleans v. Phoebus, 11 Pet. 175; Hammond v. Essex F. & M. Ins. Co., 4 Mas. 196; Brown v. Lull, 2 Sum. 443; Pitman v. Hooper, 3 Sum. 50; Foster v. The Pilot, 1 Newb. 215; Brackett v. The Hercules, Gilp. 184; Bronde v. Haven, id. 592; Lewis v. The Elizabeth & Jane, Ware 41; L'Arina v. Exchange, Bee 198; L'Arina v. Manwaring, id. 199; The Mary, 1 Paine 180; The Eastern Star, Ware 185; Brig Langdon Cheves, 2 Mas. 58; Skolfield v. Potter, Davies 392; The Island City, 1 Low. 375; The Sailor Prince, 1 Ben. 234; The Blohm, id. 229.

RULE 14.

Suits for pilotage.—In all suits for pilotage the libellant may proceed against the ship and master, or against the ship, or against the owner alone, or the master alone, in personam.

The Anne, 1 Mas. 508; The Wave, 7 Leg. Obs. 97; Logan v. The Æolian, 1 Bond. 267.

RULE 15.

Suits for damage by collision.—In all suits for damage by collision the libellant may proceed against the ship and master, or against the ship alone, or against the master or the owner alone, in personam.

Smith v. Condry, 1 How. 28; Waring v. Clarke, 5 How. 441; Newell v. Norton, 3 Wall. 257; Ward v. The Ogdensburgh, 1 Newb. 139; McLean, 622; Hale v. Washington Ins. Co., 2 Story 176; The America, 6 Law Reporter N. S. 264; The Narragansett, Olo. 246.

RULE 16.

Suits for assault and battery.—In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be in personam only.

Forbes v. Parsons, Crabbe 283; Hamon v. Fowle 1 Saw. 539; Thomas v. Lane, 2 Sum. 1; Chamberlain v. Chandler, 3 Mas. 242; Roberts v. Dallas, Bee 239.

RULE 17.

Suits for hypothecation.—In all suits against the ship or freight founded upon a mere maritime hypothecation, either express or implied, of the master, for moneys taken up in a foreign port for supplies or repairs, or other necessities for the voyage, without any claim of marine interest, the libellant may proceed either in rem, or against the master or the owner alone in personam.

The *Aurora*, 1 Wheat. 96 ; The *Grapeshot*, 9 Wall. 129 ; The *Lulu*, 10 Wall. 192 ; The *Kalorama*, id. 208 ; The *Patapsco*, 13 Wall. 329 ; The *Neversink*, 5 Blatch. 542 ; *O'Hara v. Ship Mary*, Bee 102 ; *Seldon v. Hendrickson*, 1 Brock. 396 ; *Hurry v. The John and Alice*, 1 Wash. C. C. 293 ; *Crawford v. The William Penn*, 3 id. 484.

RULE 18.

Suits on bottomry bonds, when in rem and when in personam.—In all suits on bottomry bonds, properly so called, the suit shall be in rem only against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be in personam against the wrong-doer.

The *Jerusalem*, 2 Gall. 191 ; The *Draco*, 2 Sum. 157 ; *Burke v. The P. M. Rich*, 1 Cliff. 308 ; *Patton v. The Randolph*, Gilp. 45.

RULE 19.

Suits for salvage.—In all suits for salvage the suit may be in rem against the property saved, or the proceeds thereof, or in personam against the party at whose request and for whose benefit the salvage service has been performed.

The *Blackwall*, 10 Wall. 1 ; The *Davis*, 10 Wall. 15 ; *Eads v. The H. D. Bacon*, 1 Newb. 274 ; *Brevoor v. The Fair American*, 1 Pet. Ad. 67 ; *Gates v. Johnson*, 11 Law Reporter N. S. 279.

RULE 20.

In petitory and possessory suits.—In all petitory and possessory suits between part owners or adverse pro-

prietors, or by the owners of a ship, or the majority thereof, against the master of a ship for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

Fox v. The Lodemia, Crabbe 271; *The Marengo*, 1 Sprague 506; *The Ocean*, 1 Sprague 535.

RULE 21.

Decrees, enforcement of.—In all cases of a final decree for the payment of money the libellant shall have a writ of execution, in the nature of a *fieri facias*, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the defendant or stipulators.

Amended December term, 1861, 1 Black 6; *Gaines v. Travis*, Abb. Adm. 422; *The Delaware*, Olc. 240; *Harris v. Wheeler*, 8 Blatch. 81.

RULE 22.

Informations and libels on seizures.—All informations and libels of information upon seizures for any breach of the revenue, or navigation, or other laws of the United States, shall state the place of seizure, whether it be on land or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought, and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause at

the return-day of the process why the forfeiture should not be decreed.

The *Caroline* v. U. S., 7 Cranch 496; The *Anne* v. U. S., id. 570; The *Hoppet* v. U. S., id. 389; The *Margaret*, 9 Wheat. 421; *Wood* v. U. S., 16 Pet. 342; U. S. v. The *Queen*, 11 Blatch. 416.

The *Caroline*, 1 Brock. 384; The *Washington*, 4 Blatch. 101; U. S. v. *Rectified Spirits*, 8 id. 480; *Kynoch* v. The S. C. *Ives*, 1 Newb. 205; The *Zenobia*, Abb. Ad. 48; *Brevoor* v. The *Fair American*, 1 Pet. Ad. 87; U. S. v. *Barrels of Alcohol*, 10 Int. Rev. Rec. 17. See 5 Ben. 4.

RULE 23.

Libels in instance causes.—All libels in instance causes, civil or maritime, shall state the nature of the cause; as, for example, that it is a cause, civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be; and if the libel be in rem, that the property is within the district; and if in personam, the names and occupations and places of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegations of fact upon which the libellant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce his rights in rem, or in personam, (as the case may require) and for such relief and redress as the court is competent to give in the premises. And the libellant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel at the close or conclusion thereof.

The *Brig Aurora*, 7 Cranch 382; *Schooner Adeline*, 9 Cranch 244; *Pettingill* v. *Dinsmore*, Daves 208; The *Navarro*, Olc. 127; *Talbot* v. *Wakeman*, 19 How. Pr. 36; *West* v. The *Uncle Sam*, McAll. 505; *Distilled Spirits*, 5 Ben. 5; *Boon* v. The *Hornet*, Crabbe 426; The *Boston*, 1 Sum. 328; *Treadwell* v. *Joseph*, 1 Sum. 390; *Thomas* v. *Lane*, 2 id. 1; The *Havre*, 1 Ben. 295; *About 1800 Galls. Dist. Spirits*, 5 Ben. 4.

RULE 24.

Amendments to libels, etc., of course.—In all informations and libels, in causes of admiralty and maritime jurisdiction, amendments, in matters of form, may be made at any time, on motion, to the court as of course.

And new counts may be filed, and amendments, in matters of substance, may be made, upon motion, at any time before the final decree, upon such terms as the court shall impose. And where any defect of form is set down by the defendant upon special exceptions and is allowed, the court may, in granting leave to amend, impose terms upon the libellant.

Newell v. Norton, 3 Wall. 257; Town v. The Western Metropolis, 28 How. Pr. 283.

RULE 25.

Security for costs, when.—In all cases of libels in personam the court may, in its discretion, upon the appearance of the defendant, where no bail has been taken and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation, with sureties in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order, in the progress of the suit.

Tharo v. Smith, 18 How. Pr. 47.

RULE 26.

Claim, when to be verified.—In suits in rem the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant by whom or on whose behalf the claim is made is the true and bona fide owner, and that no other person is the owner thereof. And where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or if the property be, at the time of the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And upon putting in such claim, the claimant shall file a stipulation, with sureties in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or upon an appeal, by the appellate court.

U. S. v. Barrels of Alcohol, 10 Int. Rev. Rec. 17.

RULE 27.

Answer to be verified.—In all libels in causes of civil and maritime jurisdiction, whether in rem or in personam, the answer of the defendant to the allegations in the libel shall be on oath or solemn affirmation; and the answer shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel, and shall also answer in like manner each interrogatory propounded at the close of the libel. (a) [See Rule 48.]

Gammell v. Skinner, 2 Gall. 45; *Teasdale v. The Rambler*, Bee 9; *Coffin v. Jenkins*, 3 Story 108.

RULE 28.

Exception to answer.—The libellant may except to the sufficiency, or fullness, or distinctness, or relevancy of the answer to the articles and interrogatories in the libel; and if the court shall adjudge the same exceptions, or any of them, to be good and valid, the court shall order the defendant forthwith, within such time as the court shall direct, to answer the same, and may further order the defendant to pay such costs as the court shall adjudge reasonable.

The Pioneer, Deady 58.

RULE 29.

Default, effect of.—If the defendant shall omit or refuse to make due answer to the libel upon the return-day of the process, or other day assigned by the court, the court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken pro confesso against him, and the court shall proceed to hear the cause ex parte and adjudge therein as to law and justice shall appertain. But the court may, in its discretion, set aside the default, and, upon the application of the defendant, admit him to make answer to the libel at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

The David Pratt, Ware 495.

(a) Qualified post, 49th Rule.

RULE 30.

Further answer, when required.—In all cases where the defendant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken pro confesso against the defendant to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto.

The Commander in Chief, 1 Wall. 44; *Miller v. U. S.* 11 Wall. 268; *U. S. v. Barrels of Alcohol*, 10 Int. Rev. Rec. 17.

RULE 31.

What allegation need not be answered.—The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel which will expose him to any prosecution or punishment for a crime, or for any penalty or any forfeiture of his property for any penal offense.

U. S. v. Packages of Pins, Gilp. 306; *The Aldebaran*, Olc. 130; *The Gustavia*, Blatch. & H. 189.

RULE 32.

Interrogatories propounded in answer.—The defendant shall have a right to require the personal answer of the libellant, upon oath or solemn affirmation, to any interrogatories which he may, at the close of his answer, propound to the libellant touching any matters charged in the libel, or touching any matter of defense set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution, or punishment, or forfeiture, as is provided in the thirty-first rule. In default of due answer by the libellant to such interrogatories, the court may adjudge the libellant to be in default and dismiss the libel, or may compel his answer in the premises by attachment, or take the subject-matter of the interrogatory pro confesso in favor of the defendant, as

the court, in its discretion, shall deem most fit to promote public justice.

The *David Pratt*, Ware 495; *Gammel v. Skinner*, 2 Gall. 46.

RULE 33.

Verification of answer to interrogatory, when dispensed with.—Where either the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the defendant when and as soon as it may be practicable.

RULE 34.

Intervention, how.—If any third person shall intervene in any cause of admiralty and maritime jurisdiction in rem for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the court, the other party or parties in the suit may be required, by order of the court, to make due answer; and such further proceedings shall be had and decree rendered by the court therein as to law and justice shall appertain. But every such intervenor shall be required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.

The *Mary Anne*, Ware 104; *Harper v. The New Brig*, Gilp. 536; U. S. v. *Barrels of Alcohol*, 10 Int. Rev. Rec. 17.

RULE 35.

Stipulations, how given and taken.—The stipulations required by the last preceding rule, or on appeal, or in any other admiralty or maritime proceeding, shall be

given and taken in the manner prescribed by rule 5th as amended.

Amended May 6th, 1872, 14 Wall. xi; *Lane v. Townsend*, Ware 286.

RULE 36.

Exceptions, effect of allowance.—Exceptions may be taken to any libel, allegation, or answer, for surplusage, irrelevancy, impertinence, or scandal; and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the court, the matter shall be expunged, at the cost and expense of the party in whose libel or answer the same is found.

U. S. v. Barrels of Alcohol, 10 Int. Rev. Rec. 17.

RULE 37.

Attachment, proceedings against garnishee.—In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation as to the debts, credits, or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall refuse or neglect so to do, the court may award compulsory process in personam against him. If he admits any debts, credits, or effects, the same shall be held in his hands, liable to answer the exigency of the suit.

Manro v. Almeida, 10 Wheat. 473; *Shorey v. Rennel*, 1 Sprague 418; *McDonald v. Rennel*, 11 Law Reporter N. S. 157.

RULE 38.

Property, how brought into court.—In cases of mariners' wages, or bottomry, or salvage, or other proceedings in rem, where freight or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession of any person, the court may, upon due application, by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit; and if no sufficient cause be shown, the court may order

the same to be brought into court to answer the exigency of the suit; and upon failure of the party to comply with the order, may award an attachment, or other compulsive process, to compel obedience thereto.

The Gran Para, 10 Wheat. 497; Sheppard v. Taylor, 5 Pet. 675.

RULE 39.

Non-appearance of libellant—Dismissal.—If, in any admiralty suit, the libellant shall not appear and prosecute his suit, according to the course and orders of the court, he shall be deemed in default and contumacy, and the court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

RULE 40.

Decree, when may be rescinded.—The court may, in its discretion, upon the motion of the defendant and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct.

Steamboat New England, 3 Sum. 495.

RULE 41.

Sales of property and proceeds.—All sales of property under any decree of admiralty shall be made by the marshal or his deputy, or other proper officer assigned by the court, where the marshal is a party in interest, in pursuance of the orders of the court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court by the officer making the sale, to be disposed of by the court according to law.

The Avery, 2 Gall. 308; Wallis v. Thornton, 2 Brock. 422.

RULE 42.

Moneys, deposit of.—All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so deposited in the name of the court, and shall not be drawn out except by check or checks, signed by a judge of the court, and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book, containing a memorandum and copy of all the checks so drawn and the date thereof.

RULE 43.

Intervenor for proceeds, how to come in.—Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceeding, to intervene pro interesse suo for a delivery thereof to him; and upon due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such petition or claim shall be deserted, or, upon a hearing, be dismissed, the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

Schuchardt v. Babbidge, 19 How. 239; Leland v. The Medora, 2 Woodb. & M. 92; The L. B. Goldsmith, 1 Newb. 123; Brackett v. The Hercules, Gilp. 184; Harper v. The New Brig, id. 536; The Panama, Olc. 243; The Lottawana, 21 Wall. 558.

RULE 44.

Reference to commissioners, when.—In cases where the court shall deem it expedient or necessary for the purposes of justice, the court may refer any matters arising in the progress of the suit to one or more commissioners, to be appointed by the court, to hear the parties and make report therein. And such commissioner or commissioners shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in references to them, including the power to administer oaths to and to examine the parties and witnesses touching the premises.

Furniss v. The Magoun, Olc. 55; Shaw v. Collier, 18 How. Pr. 238.

RULE 45.

Appeals, when made.—All appeals from the district to the circuit court must be made while the court is sitting, or within such other period as shall be designated by the district court by its general rules, or by an order specially made in the particular suit, or in case no such rule or order be made, then within thirty days from the rendering of the decree.

Amended May 6th, 1872, 13 Wall. xiv. The Nuestra Señora de Regla, 17 Wall. 29; Norton v. Rich, 3 Mas 443.

RULE 46.

Practice, courts to regulate.—In all cases not provided for by the foregoing rules the district and circuit courts are to regulate the practice of the said courts respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.

Beers v. Houghton, 9 Pet. 329.

RULE 47.

Arrest, bail when taken.—In all suits in personam where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the State where an arrest is made upon similar or analogous process issuing from the State courts.

Imprisonment for debt, where abolished.—And imprisonment for debt, on process issuing out of the admiralty court, is abolished in all cases where, by the laws of the State in which the court is held, imprisonment for debt has been, or shall be hereafter, abolished, upon similar or analogous process issuing from a State court.

Promulgated December Term, 1850, 10 How. v; Beers v. Houghton, 9 Pet. 329; Bingham v. Wilkins, Crabbe 50; Gaines v. Travis, 1 Abb. Adm. 422; Marshall v. Dazin, 7 N. Y. Leg. Obs. 342.

RULE 48.

Answer, sufficiency of.—The twenty-seventh rule shall not apply to cases where the sum or value in dispute

does not exceed fifty dollars, exclusive of costs, unless the district court shall be of opinion that the proceedings prescribed by that rule are necessary for the purposes of justice in the case before the court.

All rules and part of rules heretofore adopted inconsistent with this order, are hereby repealed and annulled.

Promulgated December Term, 1850, 10 How. vi.

RULE 49

Appeal, further proof, how taken.—Further proof taken in a circuit court upon an admiralty appeal shall be by deposition, taken before some commissioner appointed by a circuit court, pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the 24th of September, 1789, (a) upon an oral examination and cross-examination, unless the court in which such appeal shall be pending, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such depositions upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination, a notification from the magistrate before whom it is to be taken, or from the clerk of the court in which such appeal shall be pending, to the adverse party to be present at the taking of the same, and to put interrogatories, if he think fit, shall be served on the adverse party, or his attorney, allowing time for their attendance after being notified not less than twenty-four hours, and in addition thereto one day, Sundays exclusive, for every twenty miles' travel: *Provided*, That the court in which such appeal may be pending, or either of the judges thereof, may, upon motion, increase or diminish the length of notice above required.

Promulgated December Term, 1851, 13 How. vi. See *The Samuel*, 1 Wheat. 9; *The Georgia*, 7 Wall. 32; *The Ocean Queen*, 6 Blatch. 24.

RULE 50.

Oral evidence, when admissible on appeal.—When oral evidence shall be taken down by the clerk of the district court pursuant to the above-mentioned section of the

(a) See Revised Statutes, § 865.

act of Congress, and shall be transmitted to the circuit court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them, if he should so elect.

Promulgated December Term, 1851, 13 How. vi.

RULE 51.

New facts in answer, how mot.—When the defendant, in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication, general or special, shall be allowed. But within such time after the answer is filed as shall be fixed by the district court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid, or explain, or add to the new matters set forth in the answer; and within such time as may be fixed, in like manner, the defendant shall answer such amendments.

Promulgated December Term, 1854, 17 How. vi.

RULE 52.

1. Records on appeal, how made up.—The clerks of the district courts shall make up the records to be transmitted to the circuit courts on appeals, so that the same shall contain the following:

1. The style of the court.
2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.
3. If bail was taken, or property was attached or arrested, the process of the arrest or attachment and the service thereof, all bail and stipulations, and, if any sale has been made, the orders, warrants, and reports relating thereto.
4. The libel, with exhibits annexed thereto.
5. The pleadings of the defendant, with the exhibits annexed thereto.
6. The testimony on the part of the libellant, and any exhibits not annexed to the libel.
7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.
8. Any order of the court to which exception was made.

9. Any report of an assessor or assessors, if excepted to, with the orders of the court respecting the same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the assessor, are to be stated.

10. The final decree.

11. The prayer for an appeal, and the action of the district court thereon; and no reasons of appeal shall be filed or inserted in the transcript.

The following shall be omitted :

1. The continuances.

2. All motions, rules, and orders not excepted to, which are merely preparatory for trial.

3. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the district court was founded on some one or more of these ; in which case so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness, and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to ; and in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

2. Certificate of clerk.—The clerk of the district court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document, at the end thereof, under the seal of the court, to be a transcript of the record of the district court in the cause named at the beginning of the copy made up pursuant to this rule ; and no other certificate of the record shall be needful or inserted.

Promulgated December Term, 1854, 17 How. vi. *The Grace Girdler*, 6 Wall. 441 ; *White v. Cannon*, 6 Wall. 443 ; *The Vaughan & Tolo-graph*, 14 Wall. 258.

RULE 53.

Cross-libel, security for costs by respondent.—Whenever a cross-libel is filed upon any counter-claim arising out of the same cause of action for which the

original libel was filed, the respondents in the cross-libel shall give security, in the usual amount and form, to respond in damages as claimed in said cross-libel, unless the court, on cause shown, shall otherwise direct; and all proceedings upon the original libel shall be stayed until such security shall be given.

Promulgated December Term, 1868, 7 Wall. v.

RULE 54.

Suit for embezzlement of master, etc.—When any ship or vessel shall be libelled, or the owner or owners thereof shall be sued for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture done, occasioned, or incurred without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the said act above recited, the said owner or owners shall and may file a libel or petition in the proper district court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation with sureties for payment thereof into court, whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight, to a trustee to be appointed by the court under the fourth section of said act; and upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said court and make due proof of their respective

claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice served through the post-office, or otherwise, as the court, in its discretion, may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.

Promulgated May 6, 1872, 13 Wall. xii. The Bristol, 4 Ben. 55.

RULE 55.

Proof of claims, before whom made.—Proof of all claims which shall be presented in pursuance of said monition, shall be made before a commissioner to be designated by the court, subject to the right of any person interested to question or controvert the same; and, upon the completion of said proofs, the commissioner shall make report of the claims so proven, and upon confirmation of said report, after hearing any exceptions thereto, the moneys paid or secured to be paid into court as aforesaid, or the proceeds of said ship or vessel and freight, (after payment of costs and expenses) shall be divided pro rata amongst the several claimants in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled.

Promulgated May 6, 1872, 13 Wall. xiii. Providence and N. Y. S. S. Co., 15 Int. Rev. Rec. 193.

RULE 56.

Who may defend.—In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel, for said embezzlement, loss, destruction, damage, or injury, (independently of the limitation of liability claimed under said act): *Provided*, That in his or their libel or petition he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid,

and who shall have presented his or their claim to the commissioner under oath, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability under the said act of Congress, or both.

Promulgated May 6, 1872, 13 Wall. xiii.

RULE 57.

Jurisdiction, where it attaches.—The said libel or petition shall be filed and the said proceedings had in any district court of the United States in which said ship or vessel may be libelled to answer for any such embezzlement, loss, destruction, damage, or injury; or if the said ship or vessel be not libelled, then in the district court for any district in which the said owner or owners may be sued in that behalf. If the ship have already been libelled and sold, the proceeds shall represent the same for the purposes of these rules.

Promulgated May 6, 1872, 13 Wall. xiii.

MS.

MANUSCRIPT NOTES.

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GENERAL ORDERS IN BANKRUPTCY.

Adopted April 12th, 1875.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1874.

It is hereby ordered by the Chief Justice and Associate Justices of the Supreme Court of the United States, in pursuance of the powers conferred upon them by the several acts of Congress in that behalf, that the general orders in bankruptcy heretofore established by the court be, and they are hereby, amended so as to read as follows:

No. I.

Duties of clerks.—The clerks of the several district courts shall enter upon each petition in bankruptcy the day, and the hour of the day, upon which the same shall be filed; and shall also make a similar note upon every subsequent paper filed with them, except such papers as have been filed before the register, and so indorsed by him; and the papers in each case shall be kept in a file by themselves. No paper shall be taken from the files for any purpose, except by order of the court. Every paper shall have indorsed upon it a brief statement of its character. The clerks shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced; and the number of each case shall be indorsed on every paper. The docket shall be so arranged that a brief memorandum of every proceeding in each case shall be entered therein, in a manner convenient for reference, and shall at all times be open for public inspection. The clerks shall also keep separate minute books for

the record of proceedings in bankruptcy, in which shall be entered a minute of all the proceedings in each case, either of the court or of a register of the court, under their respective dates.

Re Dean, 1 Am. L. T. Bk. 14.

No. II.

Process.—All process, summons, and subpoenas shall issue out of the court under the seal thereof, and be tested by the clerk; and blanks with the signature of the clerk and seal of the court may, upon application, be furnished to the registers.

Re Dean, 1 Am. L. T. Bk. 14.

No. III.

Appearance.—Proceedings in bankruptcy may be conducted by the bankrupt in person in his own behalf, or by a petitioning or opposing creditor; but a creditor will only be allowed to manage before the court his individual interest. Either party may appear and conduct the proceedings by attorney, who shall be an attorney or counselor authorized to practice in the circuit or district court. The name of the attorney or counselor, with his place of residence and business, shall be entered upon the docket, with the date of the entry. All papers or proceedings offered by an attorney to be filed shall be indorsed as above required; and orders granted on motion shall contain the name of the party or attorney making the motion. Notices and orders which are not, by the act or by these rules, required to be served on the party personally, may be served upon his attorney.

Re Hill, 1 Ben. 326; Re Sutherland, Deady 573.

No. IV.

Commencement of proceedings.—Upon the filing of a petition in case of voluntary bankruptcy, or as soon as any adjudication of bankruptcy is made upon a petition filed in case of involuntary bankruptcy, the petition shall be referred to one of the registers in such manner as the dis-

trict court shall direct; and the petitioner shall furnish the register with a copy of the papers in the case, and thereafter all the proceedings required by the act shall be had before him, except such as are required by the act to be had in the district court, or by special order of the district judge, unless some other register is directed to act in the case.

Order of reference.—The order designating the register to act upon any petition shall name a day upon which the bankrupt shall attend before the register, from which date he shall be subject to the orders of the court in all matters relating to his bankruptcy, and may receive from the register a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court.

Service of copy of order.—A copy of the order shall forthwith be sent by mail to the register, or be delivered to him personally, by the clerk or other officer of the court.

Re Dean, 1 Am. L. T. Bk. 10; Re Talbot, 2 id. 15; Re Morford, 2 Ben. 264; Re Patterson, id. 508; Re Glaser, 2 Ben. 183; Re Lanier, 1 Bk. Reg. 60.

No. V.

Registers.—The time when and the place where the register shall act upon the matters arising under the several cases referred to them, shall be fixed by special order of the district court, or by the register acting under the authority of a general order, in each case, made by the district court; and at such times and places the registers may perform the acts which they are empowered to do by the act, and conduct proceedings in relation to the following matters, when uncontested, viz: making adjudication of bankruptcy on petition of the debtor; administering oaths; receiving the surrender of a bankrupt; granting protection thereon; giving requisite direction for notices, advertisements, and other ministerial proceedings; taking proofs of claims; ordering payment of rates and taxes, and salary or wages of persons in the employment of the assignee; ordering amendments, or inspection, or copies, or extracts of any proceedings; taking accounts of proceeds of securities held by any creditor; taking evidence concerning expenses and charges against the bank-

rupt's estate; auditing and passing accounts of assignees, proceedings for the declaration and payment of dividends, and taxing costs in any of the proceedings; and generally dispatching all administrative business of the court in matters of bankruptcy, and making all requisite uncontested orders and directions therein which are not, by the acts of Congress concerning bankruptcy, specifically required to be made, done, or performed by the district court itself, all of which shall be subject to the control and review of the said court: *Provided, however,* That by the surrender of a bankrupt mentioned and referred to in this order, and in the act in that behalf, is intended and understood a personal submission of the bankrupt himself for full examination and disclosure in reference to his property and affairs, and not a surrender or delivery of the possession of his property.

Re Perry, 1 Am. L. T. Bk. 4; Re Dean, id. 10; Re Devlin, id. 32; Re Watts, 3 Ben. 167; Re Morford, 1 Ben. 264; Re Hasbrouck, id. 402; Re Orne, id. 420; Re Robinson, id. 270; Re Heys, id. 333; Re Glaser, id. 183; Re Adams, 3 Ben. 7; Re Hyman, id. 28; Re Lane, id. 98; Re Stetson, 4 Ben. 147; Re Blaisdell, 5 Ben. 420; Re Gettleston, 1 Bk. Reg. 170; Re Lanier, 2 Bk. Reg. 59; Re Jones, id. 20; Re Carow, 4 Bk. Reg. 178; Re Heller, 5 id. 46; Re Clark, 6 Bk. Reg. 197; Re Speyer, id. 255; Matt. of Staff, 43 How. Pr. 110.

NO. VI.

Dispatch of business.—Every register, in performing the duties required of him under the act, and by these orders, or by orders of the district court, shall use all reasonable dispatch, and shall not adjourn the business but for good cause shown. Six hours' sessions shall constitute a day's sitting if the business requires; and when there is time to complete the proceedings in progress within the day, the party obtaining any adjournment or postponement thereof may be charged, if the court or register think proper, with all the costs incurred in consequence of the delay.

Re Devlin, 1 Ben. 335; Re Schepeler, 3 Ben. 346; Re Sherwood, 1 Bk. Reg. 74; Re Norton, 6 id. 297; Re Phelps, 2 Am. L. T. Bk. 25.

NO. VII.

Examination and filing of papers.—It shall be the duty of the register to examine the bankrupt's petition and

schedules filed therewith, and to certify whether the same are correct in form; or, if deficient, in what respect they are so; and the court may allow amendments to be made in the petition and schedules upon the application of the petitioner, upon proper cause shown, at any time prior to the discharge of the bankrupt. The register shall indorse upon each paper filed with him the time of filing, and at the close of the last examination of the bankrupt, the register having charge of the case shall file all the papers relating thereto in the office of the clerk of the district court, and these papers, together with those on file in the clerk's office, and the entries in the minute book, shall constitute the record in each case; and the clerk shall cause the papers in each case to be bound together.

Re Morford, 1 Ben. 264; Re Bellamy, id. 427; Re Levy, id. 500; Re Patterson, 509; Re Watts, 3 Ben. 167; Re Dole, 11 Blatch. 508; Re Little, 1 Bk. Reg. 74; Re Jones, 2 Bk. Reg. 20; Anonymous, 2 Bk. Reg. 21.

NO. VIII.

Orders by the register.—Whenever an order is made by a register in any proceeding in which notice is required to be given to either party before the order can be made, the fact that the notice was given, and the substance of the evidence of the manner in which it was given, shall be recited in the preamble to the order, and the fact also stated that no adverse interest was represented at the time and place appointed for the hearing of the matter upon such notice; and whenever an order is made where adverse interests are represented before the register, the fact shall be stated that the opposing parties consented thereto, or that the adverse interest represented made no opposition to the granting of such order: *Provided, however*, if any party interested adversely to such order shall not, before the hearing of the application therefor, give reasonable notice in writing to the register that he intends to contest the same, and objects to its being heard by the register, the same shall be heard by the register as by consent. But all such orders may be reviewed by the district court at the request of any party aggrieved, upon his paying the cost of certifying the matter to said court within ten days from the making of the order; which request

and payment shall be entered by the register on his docket; and he shall thereupon forthwith certify the said matter to the court, and said court, upon making its decision, may make such order with regard to the costs as justice shall require.

Re Macintire, 1 Ben. 279; Re Lanier, 2 Bk. Reg. 60.

No. IX.

Notification to assignee of his appointment.—It shall be the duty of the register, immediately upon the appointment of an assignee, as prescribed in sections twelve and thirteen ^(a) of the act, (should he not be present at such meeting) to notify him, by personal or mail service, of his appointment; and in such notification the assignee so appointed shall be required to give notice forthwith to the register of his acceptance or rejection of the trust. No official assignee shall be appointed by the court or judge; nor any general assignee to act in any class of cases. No additional assignee shall be appointed by the court or judge under section thirteen ^(b) of the act, except upon petition of one-fourth in number and value of the creditors who have proved their debts, and upon good and sufficient cause shown

No. X.

Testimony, how taken.—The examination of witnesses before a register in bankruptcy may be conducted by the party in person or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination, which shall be had in conformity with the mode now adopted in courts of law. The depositions upon such examination shall be taken down in writing, by or under the direction of the register, in the form of narrative, unless he determines that the examination shall be by question and answer in special instances, and when completed shall be read over to the witness and signed by him in the presence of the register. Any question or questions which may be objected to shall be noted by the register upon the deposition, but he shall not have power to de-

(a) Revised Statutes, §§ 5033, 5034. (b) Ibid.

cide on the competency, materiality, or relevancy of the question; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just. In case of refusal of a witness to attend, or to testify before a register, the same proceedings may be had as are now authorized with respect to witnesses to be produced on examination before an examiner of any of the courts of the United States on written interrogatories.

Re Levy, 1 Ben. 496; Re Patterson, id. 508; Lawrence v. Graves, 5 Bk. Reg. 279; Re Dunn, id. 487; Re Koch, 1 Bk. Reg. 153.
Ex parte Wild, 12 Blatchf. 42.

No. XI.

Minutes before register, filing, etc.—A memorandum made of each act performed by a register shall be in suitable form, to be entered upon the minute-book of the court, and shall be forwarded to the clerk of the court not later than by mail the next day after the act has been performed. Whenever an issue is raised before the register in any proceedings, either of fact or law, he shall cause the same to be stated in writing in the manner required by the fourth and sixth sections ^(a) of the act, and certify the same forthwith to the district judge for his decision. The pendency of the issue undecided before a judge shall not necessarily suspend or delay other proceedings before the register or court in the case.

Re Pulver, 1 Ben. 381; Re Levy, id. 504; Re Patterson, id. 509; Re Freidenberg, 2 Ben. 133; Re Comstock, 3 Ben. 236; Re Loder, 4 Ben. 125; Re Sherwood, 1 Bk. Reg. 74; Re Sturgeon, id. 131; Re Peck, 3 Bk. Reg. 186; Re Haskell, 4 id. 184; Re Clark, 6 Bk. Reg. 202; Re Kirk, 7 id. 329.

No. XII

Accounts for services of register and marshal.—Every register shall keep an accurate account of his traveling and incidental expenses, and those of any clerk or other officer attending him in the performance of his duties in any case or number of cases which may be referred to him; and shall make return of the same under oath, with proper vouchers, (when vouchers can be procured) on the first Tuesday in each month; and the marshal shall

(a) Revised Statutes, §§ 5009, 5010.

make his return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, publication of notices and other services, and other actual and necessary expenses paid by him, with vouchers therefor whenever practicable, and also with a statement that the amounts charged by him are just and reasonable.

Re Dean, 1 Am. L. T. Bk. 13.

No. XIII.

Marshal as messenger—Surrender of property.—In cases of voluntary bankruptcy, the bankrupt, after being decreed such, and after the appointment of an assignee or trustee, and assignment duly made, shall, unless the court otherwise direct, deliver possession of all his property and assets (including evidences of debt and books of account) to said assignee or trustee, unless at or after such decree and before said assignment the court, on application of any creditor or creditors, and upon good cause shown by affidavit, shall deem it necessary for the interest of the creditors that possession of such property and assets should be sooner delivered up; in which case, as in cases of involuntary bankruptcy, the court may order said property and assets to be taken possession of by the marshal as messenger, directions for which may be inserted, in pursuance of such order, in the original warrant in bankruptcy, or in a special warrant to be issued for that purpose.

It shall be the duty of the marshal as messenger to take possession of the property of the bankrupt when required thereto by warrant or order of the court, and to deliver the same to the assignee or trustee when appointed and assignment made as aforesaid. The marshal, when taking possession as aforesaid, shall make an inventory of the property and assets by him received, and deliver the same, with the said property and assets, to said assignee or trustee, who shall verify the same, and if found correct and full, no further inventory shall be required: [*Provided, however,* That if any goods or effects so taken into possession as the property of the bankrupt shall be claimed by or in behalf of any other person, the marshal shall forthwith notify the petitioning creditor, or assign-

ee if one be appointed, of such claim, and may, within five days after so giving notice of such claim, deliver them to the claimant or his agent, unless the petitioning creditor or party at whose instance possession is taken shall, by bond with sufficient sureties, to be approved by the marshal, indemnify the marshal for the taking and detention of such goods and effects, and the expenses of defending against all claims thereto, and, in case of such indemnity, the marshal shall retain possession of such goods and effects, and proceed in relation thereto as if no such claim had been made: *And provided further*, That in case the petitioning creditor claims that any property not in the possession of the bankrupt belongs to him, and should be taken by the marshal, the marshal shall not be bound to take possession of the same unless indemnified in like manner.† He shall also, in case the bankrupt is absent, or cannot be found, prepare a schedule of the names and residences of his creditors, and the amount due to each, from the books or other papers of the bankrupt that may be seized by him under his warrant, and from any other sources of information; but all statements upon which his return shall be made shall be in writing, and sworn to by the parties making them, before one of the registers in bankruptcy of the court, or a commissioner of the courts of the United States. In cases of voluntary bankruptcy, the marshal may appoint special deputies to act, as he may designate, in one or more cases, as messengers, for the purpose of causing the notices to be published and served as required in the eleventh section (a) of the act, and for no other purpose. In giving the notices required by the third subdivision of the eleventh section (b) of the act, it shall be sufficient to give the names, residences, and the amount of the debts (in figures) due the several creditors, so far as known, and no more.

Re Hill, 1 Ben. 321; Re Heys, id. 334; Re Harthill, 4 Benn. 448; Re Adams, 5 Ben. 544; Re Carow, 4 Bk. Reg. 179; Re Kennedy, 7 Bk. Reg. 337; Re Howes, 3 id. 423; Re Sallee, 2 Am. L. T. Bk. 7; Re Muller, Deady 513; The Ironsides, 4 Biss. 518.

NO. XIV.

Petitions and amendments.—All petitions, and the schedules filed therewith, shall be printed or written out

(a) Revised Statutes, §§ 5019, 5032.

(b) Revised Statutes, § 5032, and § 5 Act 1874.

plainly, and without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference; and whenever any amendments are allowed, they shall be written and signed by the petitioner on a separate paper, in the same manner as the original schedules were signed and verified; and if the amendments are made to different schedules, the amendments to each schedule shall be made separately, with proper reference to the schedule proposed to be amended, and each amendment shall be verified by the oath of the petitioner in the same manner as the original schedules.

Re Morford, 1 Ben. 264; Re Orne, id. 421; Re Watts, 3 Ben. 166; Re Little, 1 Bk. Reg. 74; Re Morganthal, id. 98; Re Gallinger, 1 Saw. 224; Re Raynor, 11 Blatch. 53.

No. XV.

Priority of actions—Involuntary bankruptcy.—Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within six months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest act of bankruptcy; and in case the several acts of bankruptcy are alleged in the different petitions to have been committed on the same day, the court before which the same are pending may order them to be consolidated, and proceed to a hearing as upon one petition; and if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to proceed to a hearing upon the remaining petitions unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated.

Matt. of Wielarski, 4 Ben. 468.

No. XVI.

Filing petitions in different districts.—In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be

had in the district in which the debtor has his domicile ; and such petition may be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions ; and in case of two or more petitions against the same firm in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by the insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions ; and in either case the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard ; and the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed. In case two or more petitions for adjudication of bankruptcy shall be filed in different districts by different members of the same copartnership for an adjudication of the bankruptcy of said copartnership, the court in which the petition is first filed having jurisdiction, shall take and retain jurisdiction over all proceedings in such bankruptcy until the same shall be closed ; and if such petitions shall be filed in the same district, action shall be first had upon the one first filed.

Re Penn, 5 Ben. 97 ; Re Leland, id. 172 ; Re Little, 1 Bk. Reg. 74 ; Re Boston etc. R. R. Co., 9 Blatch. 409.

NO. XVII.

Redemptions of property and compounding claims.

—Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage, or other pledge, or deposit, or lien upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof, or to compound any debts or other claims or securities due or belonging to the estate of the bankrupt, the assignee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor in the office of the clerk of the district court ; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given in some newspaper, to be designated by the court, at least ten days before the hearing, so that

all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing such act on the part of the assignee.

Estate of Morris, Crabbe 70.

NO. XVIII.

Proceedings in case of copartnerships.—In case one or more members of a copartnership refuse to join in a petition to have the firm declared bankrupt, the parties refusing shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the partnership, and notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against; and he shall have the right to appear at the time fixed by the court for the hearing of the petition, and to make proof, if he can, that the copartnership is not insolvent, or has not committed an act of bankruptcy, and to take all other defenses which any debtor proceeded against is entitled to take by the provisions of the act; and in case an adjudication of bankruptcy is made upon the petition, such copartner shall be required to furnish to the marshal, as messenger, a schedule of his debts and an inventory of his property in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made.

Re Boylan, 1 Ben. 267; Re Lewis, 2 Ben. 96; Re Crockett, id. 514; Re Penn, 5 Ben. 95; Re Little, 1 Bk. Reg. 74; Re Prankard, 1 Bk. Reg. 51; Re Abbe, 2 Bk. Reg. 26; Re Grady, 3 id. 54; Re Williams, 3 Bk. Reg. 74; Re Mitchell, id. 111; Re Norcross, 1 N. Y. Leg. Obs. 100; Re Moritz, 5 Law Reporter 325.

NO. XIX.

Duties of assignees.—The assignee shall, immediately on entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession; except where an inventory is furnished to him by the marshal; in which case, having verified the same, he shall add thereto a certificate that the same is correct, or that the same is correct as modified by a supplemental

inventory to be annexed thereto; in which supplemental inventory he shall state any deficiency of assets named in the marshal's inventory, and shall add any property or assets not contained therein.

The assignee shall make report to the court, within twenty days after receiving the deed of assignment, of the articles set off to the bankrupt by him, according to the provisions of the fourteenth section of the act, (a) with the estimated value of each article, and any creditor may take exceptions to the determination of the assignee within twenty days after the filing of the report. The register may require the exceptions to be argued before him, and shall certify them to the court, for final determination, at the request of either party. The substance of each monthly return of the assignee shall be sent by the register to any creditor who shall request it, and pay the fee provided for notices to creditors. In case the assignee shall neglect to file any report or statement which it is made his duty to file or make by the bankrupt act, or any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the register to make an order requiring the assignee to show cause before the court, at a time specified in the order, why he should not be removed from office. The register shall cause a copy of the order to be served upon the assignee at least seven days before the time fixed for the hearing, and proof of the service thereof to be delivered to the clerk. All accounts of assignees are to be referred, as of course, to the register for audit, unless otherwise specially ordered by the court.

Re Stuyvesant Bk., Ben. 566; Re Jackson, 2 Bk. Reg. 158; Re Hanna, 4 Bk. Reg. 139; Re Clark, 6 id. 200; Matt. of Kasson, 4 Law. Rep. 489; Matt. of Cheney, 5 id. 19; Downer v. Brackett, id. 392; Exp. Snow, 1 N. Y. Leg. Obs. 264.

No. XX.

Composition with creditors, arbitration.—When ever an assignee shall make application to the court for authority to submit a controversy arising in the settlement of demands against the bankrupt's estate, or of debts due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by

(a) Revised Statutes, § 5045.

agreement with the other party, the subject-matter of the controversy and the reasons why the assignee thinks it proper and most for the interest of the creditors that it should be settled by arbitration or otherwise, shall be set forth clearly and distinctly in the application; and the court, upon examination of the same, may immediately proceed to take testimony and make an order thereon, or may direct the assignee to give notice of the application, either by publication or by mail, or both, to the creditors who have proved their claims, to appear and show cause, on a day to be named in the order and notice, why the application should not be granted, and may make such order thereon as may be just and proper.

Matt. of Graves, 2 Ben. 100; In re Reiman, 12 Blatchf. 562.

No. XXI.

Disposal of property by assignee.—Upon application to the court, and for good cause shown, the assignee may be authorized to sell any specified portion of the bankrupt's estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold, which account he shall file with his report at the first meeting of creditors after the sale. In making sale of a franchise of a corporation, it may be offered in fractional parts, or in certain numbers of shares, corresponding to the number of shares in the bankrupt corporation.

Re Bellamy, 1 Ben. 428; Re Robinson, id. 270; Re White, 2 Ben. 85; Re McClellan, 1 Am. L. T. Bk. 48; Re Columbian Met. Wks., 3 Bk. Reg. 18; Re Mebane, id. 91; Re Hanna, 4 id. 139; Re Ryan, 6 Bk. Reg. 235; Re Ellerhorst, 7 id. 49; Re National Iron Co., 8 id. 422; Re O'Fallon, 2 Dill. 548; Re Vila, 5 Law. Rep. 17; Re Hahnen, 1 Penn. L. J. 10.

No. XXII.

Perishable property.—In all cases where goods or other articles come into possession of the messenger or assignee which are perishable, or liable to deterioration in value, the court may, upon application, in its discretion, order the same to be sold, and the proceeds deposited in court.

Matt. of Metzler, 1 Ben. 356; Pennington v. Sale, 1 Bk. Reg. 157; Knight v. Cheney, 5 id. 305.

No. XXIII.

Service of notice.—The notice provided by the eighteenth section (a) of the act shall be served by the marshal or his deputy, and notices to the creditors of the time and place of meeting provided by the section (b) shall be given through the mail by letter, signed by the clerk of the court.

Every envelope containing a notice sent by the clerk or messenger shall have printed on it a direction to the postmaster at the place to which it is sent to return the same within ten days unless called for.

No. XXIV.

Opposition to discharge.—A creditor opposing the application of a bankrupt for discharge shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file his specification of the grounds of his opposition, in writing, within ten days thereafter, unless the time shall be enlarged by order of the district court in the case, and the court shall thereupon make an order as to the entry of said case for trial on the docket of the district court, and the time within which the same shall be heard and decided.

Re Bellamy, 1 Ben. 429; Re Tallman, 2 id. 404; Book's Case, 3 McLean 317; Re McVey, 2 Bk. Reg. 85; Re Grefe, id. 106; Re Smith, 5 Bk. Reg. 20; Re Heusted, 5 Law Rep. 510; Re Tibbetts, id. 259; Dutton v. Freeman, id. 447; Re Murdock, 1 Low. 362; Re Sutherland, Deady 573; Re Brent, 2 Dill. 129; Re Calendar, 1 N. Y. Leg. Obs. 200; Exp. King, id. 22; Re Traphagen, id. 98.

No. XXV.

Second and third meeting of creditors.—Whenever any bankrupt shall apply for his discharge, within three months from the date of his being adjudged a bankrupt, under the provisions of the twenty-ninth section (c) of the act, the court may direct that the second and third meetings of creditors of said bankrupt, required by the twenty-seventh and twenty-eighth sections (d) of said act, shall be

(a) Revised Statutes, §§ 5039-5041.

(b) Ibid.

(c) Ibid, § 5108.

(d) Ibid, §§ 5092-5093.

had on the day which may be fixed in the order of notice for the creditors to appear and show cause why a discharge should not be granted such bankrupt; and the notices of such meeting shall be sufficient if it be added to the notice to show cause, that the second and third meetings of said creditors shall be had before the register upon the same day that cause may be shown against the discharge, or upon some previous days or day.

Re Dean, 1 Am. L. T. Bk. 12. Re Bellamy, 1 Ben. 429.

No. XXVI.

Appeals.—Appeals in equity from the district to the circuit court, and from the circuit to the Supreme Court of the United States, shall be regulated by the rules governing appeals in equity in the courts of the United States. Any supposed creditor who takes an appeal to the circuit court from the decision of the district court rejecting his claim, in whole or in part, according to the provisions of the eighth section (*) of the act, shall give notice of his intention to enter the appeal within ten days from the entry of the final decision of the district court upon his claim; and he shall file his appeal in the clerk's office of the circuit court within ten days thereafter, setting forth a statement in writing of his claim in the manner prescribed by said section; and the assignee shall plead or answer thereto in like manner within ten days after the statement shall be filed. Every issue thereon shall be made up in the court, and the cause placed upon the docket thereof, and shall be heard and decided in the same manner as other actions at law.

Re Reed, 2 Bk. Reg. 2; Ruddick v. Billings, 3 Bk. Reg. 14; Littlefield v. Delaware etc. Co., 4 Bk. Reg. 77; Re O'Brien, 1 Bk. Reg. 38; Baldwin v. Rapplee, 5 Bk. Reg. 19; Re Coleman, 7 Blatch. 192; Re Kyler, 6 Blatch. 514; Clark v. Iselin, 9 Blatch. 196; Re Place, id. 369; Re Casey, 10 Blatch. 376; Sedgwick v. Friedenberg, 11 Blatch. 77. Re Sutherland, 2 Biss. 405; Re Alexander, 8 Am. L. R. N. S. 423; Citizens' Bk. v. Ober, 10 id. 36; Re Hall, 1 Dill. 586; Sutherland v. Kellogg, 12 Int. Rev. Rec. 211; York's Case, 1 Abb. U. S. 503; Benjamin v. Hart, 4 Ben. 454; Re Troy Woolen Co., 5 Ben. 413.

Wood v. Bailey, 21 Wall. 640.

No. XXVII.

Imprisoned debtor.—If at the time of preferring his petition the debtor shall be imprisoned, the court, upon his

(*) Revised Statutes, § 4980.

application, may order him to be produced upon habeas corpus by the jailer, or any officer in whose custody he may be, before the register, for the purpose of testifying in any matter relating to his bankruptcy; and if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment. If the petitioner, during the pendency of the proceedings in bankruptcy, be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of habeas corpus to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy, and if so provable, he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge, the court shall cause notice to be served upon the creditor, or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order.

Re Seymour, 1 Ben. 348; Re Glaser, 2 Ben. 180; Re Valk, 3 Ben. 431; Re Walker, 1 Bk. Reg. 60; Re Whitehouse, 4 id. 15; Re Devoe, 1 Am. R. T. Bk. 90; Re Hazleton, id. 105; Re Pettis, 7 Am. L. R. N. S. 695; Re Kimball, 6 Blatch. 292.

No. XXVIII.

Deposit and payment of moneys.—The district court in each district shall designate certain national banks if there are any within the judicial district, or if there are none, then some other safe depository, in which all moneys received by assignees or paid into court in the course of any proceedings in bankruptcy, shall be deposited; and every assignee and the clerk of said court shall deposit all sums received by them, severally on account of any bankrupt's estate, in one designated depository; and every clerk shall make a report to the court of the funds received by him, and of deposits made by him, on the first Monday of every month. On the first day of each month the assignee shall file a report with the register, stating whether any collections, deposits, or payments have been made by him during the preceding month, and, if any, he shall state the gross amount of each. The register shall enter such reports upon a book to be kept by him for that purpose, in which a separate account shall be kept with

each estate; and he shall also enter therein the amount, the date, and the expressed purpose of each check countersigned by him. No moneys so deposited shall be drawn from such depository unless upon a check, or warrant, signed by the clerk of the court, or by an assignee, and countersigned by the judge of the court, or one of the registers designated for that purpose, stating the date, the sum, and the account for which it is drawn; and an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the assignee or the clerk; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this rule shall be furnished to the depository so designated, and also the name of any register authorized to countersign said checks.

Pennington v. Sale, 1 Bk. Reg. 157.

No. XXIX.

Prepayment or security of fees.—The fees of the register, marshal, and clerk shall be paid or secured in all cases before they shall be compelled to perform the duties required of them by the parties requiring such service; and in the case of witnesses, their fees shall be tendered or paid at the time of the service of the summons or subpoena, and shall include their traveling expenses to and from the place at which they may be summoned to attend. The court may order the whole or such portion of the fees and costs in each case to be paid out of the fund in court in such case as shall seem just.

The funds deposited with the register, marshal, and clerk shall, in all cases where they come out of the bankrupt's estate, be considered as a part of such estate, and the assignee shall be charged therewith, and shall not be allowed for any disbursements therefrom, except upon the production of proper vouchers from such officers, respectively, given after the due allowance of their respective bills.

Exp. Greaves, 1 N. Y. Leg. Obs. 213.

No. XXX.

FEES AND COSTS.

Clerks.—The fees of the clerk shall be the same as now allowed by law for similar services in the general fee-bill, section eight hundred and twenty-eight Revised Statutes, except as herein provided; but no charge shall be made for filing any paper previously filed with the register. Also,

For entering memoranda or minutes of register, each folio.....	\$0 10
For sending notice to creditors by mail, each.....	15
For inserting notice in newspaper.....	50
(The necessary cost of advertising to be paid as an expense of the estate.)	
For taxing the costs in each case.....	1 00
—and for each folio of taxed bill.....	10

Registers.—The following and no other fees shall be allowed to the register:

For filing and entry of the general order of reference, and for office-rent, stationery, and other incidental expenses of proceedings, conducted in the usual office of the register, to be allowed once only in any cause..... 5 00

When the proceedings are not conducted in the usual office of the register, but in some other city or town, he shall be allowed for each day employed in going, attending, and returning..... 5 00

Also, in such case, traveling and incidental expenses of himself and of any clerk or other officer attending him, which expenses and fees shall be appropriated among the cases, as provided in section five of the act, or section fifty-one hundred and twenty-five of the Revised Statutes.

For each day's service while actually employed under a special order of the court, a sum to be allowed by the court, not exceeding..... 5 00

But only one per diem allowance to be made for a single day, and no duplication of such allowances to be made for different cases on the same day; and no other allowance shall be made for clerk hire except as above stated.

For every affidavit to any petition, schedule, or other proceeding in bankruptcy, except proof of debt by a creditor or his agent, for each oath and certifying the same	\$ 25
For examining petition and schedules and certifying to their correctness	3 00
For every warrant in bankruptcy, or other process, issued and directed to the marshal (not including warrants for payment of money or anything other than process)	2 00
For each day in which a general meeting of creditors is held, and attending same	3 00
For notification to assignee of his appointment	50
For assignment of bankrupt's effects	1 00
For every bond with sureties	1 00
For every application for a general meeting of creditors	1 00
For every summons or subpoena requiring the attendance of a bankrupt, a bankrupt's wife, or a witness for examination, for each person summoned ..	10
For taking depositions, including proofs of debts, and examination of bankrupt or his wife, for each folio	20
For certifying proof of debt as satisfactory	25
For copies of depositions and other papers, each folio ..	10
For each notice which the register may be required to send to or serve on any creditor (which shall include for postage and stationery)	15
For mileage in making personal service when necessary, the same as allowed by law to the marshal.	
For inserting notice in newspaper when required	50
(Costs of advertising to be allowed as part of the expenses of the estate.)	
For each order for a general dividend	3 00
For computation of dividends	3 00
In addition thereto, for each creditor	10
For every judicial order made by a register necessary or proper to be made by him, and not herein otherwise specially provided for, and not including matters merely ministerial	1 00
For every discharge where there is no opposition	2 00
For auditing the accounts of assignees	1 00
— and for each additional hour necessarily employed therein, after the first hour	1 00

For every certificate of question to the district court or judge, under sections four and six of the act, or sections 5009 and 51010 of the Revised Statutes.....	\$1 00
For preparing such certificate, each folio.....	20
For each folio or memorandum sent to the clerk....	10
For countersigning each check of assignee.....	10
For filing every paper not previously filed by the clerk, and marking and identifying every exhibit	10
(Fees paid by creditors for establishing their debts shall be entitled to rank with other fees and costs in the case under section 5101, Revised Statutes.)	

Marshals.—The fees of the marshal shall be the same as are allowed for similar services by the general fee-bill in section 829 of the Revised Statutes, as modified by section 5126, including additional fees allowed by the latter section for distinct services; but no allowances shall be made under the last clause of section 5126, commencing with the words "For cause shown."

The marshal shall be allowed for each hour necessarily employed in making inventory of bankrupt's property.....	1 00
—and for each folio of inventory.....	20

For each hour actually and necessarily employed in personal attention in taking care of bankrupt's property.....	1 00
(No other allowance to be made for custody of property, except for actual disbursements, which shall in all cases be passed upon by the court.)	

Assignees.—The fees and allowances of assignees shall be as prescribed and provided for in sections 5009 and 5100 of the Revised Statutes: *Provided, That,* in addition to disbursements made, no allowance shall be made other than the commissions provided for in section 5100, except as hereinafter specified; and said commissions shall be calculated but once upon the amount of moneys received and paid, and not upon both the receipt and payment thereof. Besides which, there shall be allowed to the assignee as follows:

For serving or sending notices to creditors, or publishing the same, when required to be done by the assignee, the same amount allowed to the register for like services.

For every affidavit to any petition, schedule, or other proceeding in bankruptcy, except proof of debt by a creditor or his agent, for each oath and certifying the same	\$ 25
For examining petition and schedules and certifying to their correctness	3 00
For every warrant in bankruptcy, or other process, issued and directed to the marshal (not including warrants for payment of money or anything other than process)	2 00
For each day in which a general meeting of creditors is held, and attending same	3 00
For notification to assignee of his appointment	50
For assignment of bankrupt's effects	1 00
For every bond with sureties	1 00
For every application for a general meeting of creditors	1 00
For every summons or subpoena requiring the attendance of a bankrupt, a bankrupt's wife, or a witness for examination, for each person summoned ..	10
For taking depositions, including proofs of debts, and examination of bankrupt or his wife, for each folio	20
For certifying proof of debt as satisfactory	25
For copies of depositions and other papers, each folio ..	10
For each notice which the register may be required to send to or serve on any creditor (which shall include for postage and stationery)	15
For mileage in making personal service when necessary, the same as allowed by law to the marshal.	
For inserting notice in newspaper when required (Costs of advertising to be allowed as part of the expenses of the estate.)	50
For each order for a general dividend	3 00
For computation of dividends	3 00
In addition thereto, for each creditor	10
For every judicial order made by a register necessary or proper to be made by him, and not herein otherwise specially provided for, and not including matters merely ministerial	1 00
For every discharge where there is no opposition	2 00
For auditing the accounts of assignees	1 00
— and for each additional hour necessarily employed therein, after the first hour	1 00

For every certificate of question to the district court or judge, under sections four and six of the act, or sections 5009 and 51010 of the Revised Statutes.....	\$1 00
For preparing such certificate, each folio.....	20
For each folio or memorandum sent to the clerk....	10
For countersigning each check of assignee.....	10
For filing every paper not previously filed by the clerk, and marking and identifying every exhibit	10
(Fees paid by creditors for establishing their debts shall be entitled to rank with other fees and costs in the case under section 5101, Revised Statutes.)	

Marshals.—The fees of the marshal shall be the same as are allowed for similar services by the general fee-bill in section 829 of the Revised Statutes, as modified by section 5126, including additional fees allowed by the latter section for distinct services; but no allowances shall be made under the last clause of section 5126, commencing with the words "For cause shown."

The marshal shall be allowed for each hour necessarily employed in making inventory of bankrupt's property.....	1 00
—and for each folio of inventory.....	20

For each hour actually and necessarily employed in personal attention in taking care of bankrupt's property.....	1 00
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(No other allowance to be made for custody of property, except for actual disbursements, which shall in all cases be passed upon by the court.)

Assignees.—The fees and allowances of assignees shall be as prescribed and provided for in sections 5099 and 5100 of the Revised Statutes: *Provided*, That, in addition to disbursements made, no allowance shall be made other than the commissions provided for in section 5100, except as hereinafter specified; and said commissions shall be calculated but once upon the amount of moneys received and paid, and not upon both the receipt and payment thereof. Besides which, there shall be allowed to the assignee as follows:

For serving or sending notices to creditors, or publishing the same, when required to be done by the assignee, the same amount allowed to the register for like services.

For every affidavit to any petition, schedule, or other proceeding in bankruptcy, except proof of debt by a creditor or his agent, for each oath and certifying the same	\$ 25
For examining petition and schedules and certifying to their correctness	3 00
For every warrant in bankruptcy, or other process, issued and directed to the marshal (not including warrants for payment of money or anything other than process)	2 00
For each day in which a general meeting of creditors is held, and attending same	3 00
For notification to assignee of his appointment	50
For assignment of bankrupt's effects	1 00
For every bond with sureties	1 00
For every application for a general meeting of creditors	1 00
For every summons or subpoena requiring the attendance of a bankrupt, a bankrupt's wife, or a witness for examination, for each person summoned ..	10
For taking depositions, including proofs of debts, and examination of bankrupt or his wife, for each folio	20
For certifying proof of debt as satisfactory	25
For copies of depositions and other papers, each folio ..	10
For each notice which the register may be required to send to or serve on any creditor (which shall include for postage and stationery)	15
For mileage in making personal service when necessary, the same as allowed by law to the marshal.	
For inserting notice in newspaper when required (Costs of advertising to be allowed as part of the expenses of the estate.)	50
For each order for a general dividend	3 00
For computation of dividends	3 00
In addition thereto, for each creditor	10
For every judicial order made by a register necessary or proper to be made by him, and not herein otherwise specially provided for, and not including matters merely ministerial	1 00
For every discharge where there is no opposition	2 00
For auditing the accounts of assignees	1 00
—and for each additional hour necessarily employed therein, after the first hour	1 00

For every certificate of question to the district court or judge, under sections four and six of the act, or sections 5009 and 5101 of the Revised Statutes.....	\$1 00
For preparing such certificate, each folio.....	20
For each folio or memorandum sent to the clerk....	10
For countersigning each check of assignee.....	10
For filing every paper not previously filed by the clerk, and marking and identifying every exhibit	10
(Fees paid by creditors for establishing their debts shall be entitled to rank with other fees and costs in the case under section 5101, Revised Statutes.)	

Marshals.—The fees of the marshal shall be the same as are allowed for similar services by the general fee-bill in section 829 of the Revised Statutes, as modified by section 5126, including additional fees allowed by the latter section for distinct services; but no allowances shall be made under the last clause of section 5126, commencing with the words "For cause shown."

The marshal shall be allowed for each hour necessarily employed in making inventory of bankrupt's property.....	1 00
—and for each folio of inventory.....	20

For each hour actually and necessarily employed in personal attention in taking care of bankrupt's property.....	1 00
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(No other allowance to be made for custody of property, except for actual disbursements, which shall in all cases be passed upon by the court.)

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For serving or sending notices to creditors, or publishing the same, when required to be done by the assignee, the same amount allowed to the register for like services.

For every affidavit to any petition, schedule, or other proceeding in bankruptcy, except proof of debt by a creditor or his agent, for each oath and certifying the same	\$ 25
For examining petition and schedules and certifying to their correctness	3 00
For every warrant in bankruptcy, or other process, issued and directed to the marshal (not including warrants for payment of money or anything other than process).....	2 00
For each day in which a general meeting of creditors is held, and attending same	3 00
For notification to assignee of his appointment.....	50
For assignment of bankrupt's effects.	1 00
For every bond with sureties.....	1 00
For every application for a general meeting of creditors	1 00
For every summons or subpoena requiring the attendance of a bankrupt, a bankrupt's wife, or a witness for examination, for each person summoned..	10
For taking depositions, including proofs of debts, and examination of bankrupt or his wife, for each folio	20
For certifying proof of debt as satisfactory.....	25
For copies of depositions and other papers, each folio.	10
For each notice which the register may be required to send to or serve on any creditor (which shall include for postage and stationery).....	15
For mileage in making personal service when necessary, the same as allowed by law to the marshal.	
For inserting notice in newspaper when required....	50
(Costs of advertising to be allowed as part of the expenses of the estate.)	
For each order for a general dividend.....	3 00
For computation of dividends.....	3 00
In addition thereto, for each creditor	10
For every judicial order made by a register necessary or proper to be made by him, and not herein otherwise specially provided for, and not including matters merely ministerial.....	1 00
For every discharge where there is no opposition....	2 00
For auditing the accounts of assignees.....	1 00
— and for each additional hour necessarily employed therein, after the first hour.....	1 00

For every certificate of question to the district court or judge, under sections four and six of the act, or sections 5009 and 5010 of the Revised Statutes.....	\$1 00
For preparing such certificate, each folio.....	20
For each folio or memorandum sent to the clerk....	10
For countersigning each check of assignee.....	10
For filing every paper not previously filed by the clerk, and marking and identifying every exhibit (Fees paid by creditors for establishing their debts shall be entitled to rank with other fees and costs in the case under section 5101, Revised Statutes.)	10

Marshals.—The fees of the marshal shall be the same as are allowed for similar services by the general fee-bill in section 829 of the Revised Statutes, as modified by section 5126, including additional fees allowed by the latter section for distinct services; but no allowances shall be made under the last clause of section 5126, commencing with the words "For cause shown."

The marshal shall be allowed for each hour necessarily employed in making inventory of bankrupt's property.....	1 00
—and for each folio of inventory.....	20

For each hour actually and necessarily employed in personal attention in taking care of bankrupt's property.....	1 00
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(No other allowance to be made for custody of property, except for actual disbursements, which shall in all cases be passed upon by the court.)

Assignees.—The fees and allowances of assignees shall be as prescribed and provided for in sections 5099 and 5100 of the Revised Statutes: *Provided*, That, in addition to disbursements made, no allowance shall be made other than the commissions provided for in section 5100, except as hereinafter specified; and said commissions shall be calculated but once upon the amount of moneys received and paid, and not upon both the receipt and payment thereof. Besides which, there shall be allowed to the assignee as follows:

For serving or sending notices to creditors, or publishing the same, when required to be done by the assignee, the same amount allowed to the register for like services.

For every affidavit to any petition, schedule, or other proceeding in bankruptcy, except proof of debt by a creditor or his agent, for each oath and certifying the same	\$ 25
For examining petition and schedules and certifying to their correctness	3 00
For every warrant in bankruptcy, or other process, issued and directed to the marshal (not including warrants for payment of money or anything other than process)	2 00
For each day in which a general meeting of creditors is held, and attending same	3 00
For notification to assignee of his appointment	50
For assignment of bankrupt's effects	1 00
For every bond with sureties	1 00
For every application for a general meeting of creditors	1 00
For every summons or subpoena requiring the attendance of a bankrupt, a bankrupt's wife, or a witness for examination, for each person summoned ..	10
For taking depositions, including proofs of debts, and examination of bankrupt or his wife, for each folio	20
For certifying proof of debt as satisfactory	25
For copies of depositions and other papers, each folio ..	10
For each notice which the register may be required to send to or serve on any creditor (which shall include for postage and stationery)	15
For mileage in making personal service when necessary, the same as allowed by law to the marshal.	
For inserting notice in newspaper when required	50
(Costs of advertising to be allowed as part of the expenses of the estate.)	
For each order for a general dividend	3 00
For computation of dividends	3 00
In addition thereto, for each creditor	10
For every judicial order made by a register necessary or proper to be made by him, and not herein otherwise specially provided for, and not including matters merely ministerial	1 00
For every discharge where there is no opposition	2 00
For auditing the accounts of assignees	1 00
— and for each additional hour necessarily employed therein, after the first hour	1 00

For every certificate of question to the district court or judge, under sections four and six of the act, or sections 5009 and 5010 of the Revised Statutes.....	\$1 00
For preparing such certificate, each folio.....	20
For each folio or memorandum sent to the clerk....	10
For countersigning each check of assignee.....	10
For filing every paper not previously filed by the clerk, and marking and identifying every exhibit	10
(Fees paid by creditors for establishing their debts shall be entitled to rank with other fees and costs in the case under section 5101, Revised Statutes.)	

Marshals.—The fees of the marshal shall be the same as are allowed for similar services by the general fee-bill in section 829 of the Revised Statutes, as modified by section 5126, including additional fees allowed by the latter section for distinct services; but no allowances shall be made under the last clause of section 5126, commencing with the words "For cause shown."

The marshal shall be allowed for each hour necessarily employed in making inventory of bankrupt's property.....	1 00
—and for each folio of inventory.....	20

For each hour actually and necessarily employed in personal attention in taking care of bankrupt's property.....	1 00
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(No other allowance to be made for custody of property, except for actual disbursements, which shall in all cases be passed upon by the court.)

Assignees.—The fees and allowances of assignees shall be as prescribed and provided for in sections 5099 and 5100 of the Revised Statutes: *Provided*, That, in addition to disbursements made, no allowance shall be made other than the commissions provided for in section 5100, except as hereinafter specified; and said commissions shall be calculated but once upon the amount of moneys received and paid, and not upon both the receipt and payment thereof. Besides which, there shall be allowed to the assignee as follows:

For serving or sending notices to creditors, or publishing the same, when required to be done by the assignee, the same amount allowed to the register for like services.

For each hour necessarily employed in making inventory or supplemental inventory of bankrupt's property, or verifying marshal's inventory	\$ 1 00
For each folio of inventory or supplemental inventory made by assignee.....	20
For all services in designating the exempt property of a bankrupt, and filing report thereon.....	5 00
For attending a general meeting of creditors.....	3 00
For every deed for real estate sold.....	2 00
For drawing and filing each monthly report.....	1 00
For drawing and filing each quarterly report, not exceeding four, unless specially allowed.....	5 00
For each general account submitted to a creditors' meeting, not exceeding two, unless specially allowed.....	10 00
For all services in paying a general dividend, or executing an order of final distribution, and making report thereon, including all disbursements..	5 00
In addition, for each creditor to whom a dividend is paid.....	25

Witnesses and jurors.—The fees of witnesses and jurors shall be the same as prescribed in the general fee-bill, in sections 848 and 852 of the Revised Statutes.

Attorneys.—No allowance shall be made against the estate of the bankrupt for fees of attorneys, solicitors, or counsel, except when necessarily employed by the assignee, when the same may be allowed as a disbursement; and no allowance shall be made to the assignee for custody of the bankrupt's property, except necessary disbursements in relation thereto. The necessity and reasonableness of disbursements shall in all cases be passed upon by the court.

Any money received by either of the officers mentioned, in excess of lawful fees or compensation, shall be ordered by the judge to be paid into court, and such order may be enforced, if necessary, by attachment as for contempt.

No bankrupt's discharge shall be refused or delayed by reason of the non-payment of any fees except the fee for his certificate of discharge.

In re King, 4 Biss. 319; *In re Hope Min. Co.* 2 Saw. 351.

Taxation of costs.—Ten days before the day fixed for the consideration of the assignee's final account, or at any other time fixed by the court on its own motion, or on the

application of any person interested, the clerk, marshal, and register shall file with the clerk a statement of fees, including prospective fees for final distribution, which shall exhibit, by items, each service and the fee charged for it, and the amount received. Said clerk shall tax each fee-bill, allowing none but such as are provided for by these rules, which taxation shall be conclusive, reserving to any party interested exceptions to the bills as taxed, which shall be decided by the court. The office of auditor is hereby discontinued.

Re Macintire, 1 Ben. 277; Re Robinson, 2 Ben. 145; Re Lowenstein, 3 Ben. 422; Re Sherwood, 1 Bk. Reg. 74; Re Noyes, 6 Bk. Reg. 277; Re Jackson, 8 id. 424; Re Donahue, id. 453; Re Comstock, 9 Bk. Reg. 88; Re Jones, id. 491; Re Hubbell, id. 523; Matt. of Hare, 43 How. Pr. 86; Matt. of Staff, id. 110; Gordon v. Scott, 3 Pittsb. 109.

No. XXXI.

Costs in contested adjudications.—In cases of involuntary bankruptcy, where the debtor resists an adjudication, and the court, after hearing, shall adjudge the debtor a bankrupt, the petitioning creditor shall recover, to be paid out of the fund, the same costs that are allowed by law to a party recovering in a suit in equity; and in case the petition shall be dismissed, the debtor may recover like costs from the petitioner. When a debtor shall be adjudged a bankrupt on the application of a creditor, and shall be required under the provisions of the act to furnish a schedule of his creditors, and an inventory and valuation of his estate, the court, if the estate is large and the required schedule and inventory are likely to be voluminous or complicated, or other good reason exist, may, on the application of such debtor allow him the services of a clerk or accountant to aid him therein, at such rate of compensation, not to exceed five dollars per day, as the court may deem reasonable.

Matt. of Rowell, 21 Vt. 620.

No. XXXII.

Forms and schedules.—The several forms specified in the schedules annexed to the former general orders, for the several purposes therein stated, shall be observed and used, with such alterations as may be necessary to suit the cir-

circumstances of any particular case. The tabular forms hereto annexed shall be used respectively by the several officers named in section nineteen of the amendatory act of June 22, 1874, in making the returns required by said section. In all cases where, by the provisions of the act, a special order is required to be made in any proceeding, or in any case instituted under the act in a district court of the United States, such order shall be framed by the court to suit the circumstances of the particular case; and the forms hereby prescribed shall be followed as nearly as may be, and so far as the same are applicable to the circumstances requiring such special order. In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the rules of the circuit court regulating the practice and procedure in cases at law shall be followed as nearly as may be. But the court, as the judge thereof, may, by special rule in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing.

Matt. of Freeman, 4 Ben. 245; Jobbins v. Montague, 5 Ben. 428; Matt. of Jaycox, 7 Bk. Reg. 303; Matt. of Scudder, 1 N. Y. Leg. Obs. 325; Re Raynor, 11 Blatch. 51.

No. XXXIII.

Omissions and amendments.—Whenever a debtor shall omit to state, in the schedules annexed to his petition, any of the facts required to be stated concerning his debts or his property, he shall state, either in its appropriate place in the schedules or in a separate affidavit to be filed with the petition, the reason for the omission, with such particularity as will enable the court to determine whether to admit the schedules as sufficient, or to require the debtor to make further efforts to complete the same according to the requirements of the law; and in making any application for amendment to the schedules the debtor

shall state under oath the substance of the matters proposed to be included in the amendment, and the reasons why the same had not been incorporated in his schedules as originally filed, or as previously amended. In like manner, he may correct any statement made during the course of his examination.

Re Morford, 1 Ben. 264; Re Orne, id. 423; Re Levy, id. 500; Re Watts, 3 Ben. 166; Re Little, 1 Bk. Reg. 74; Re Jones, 2 Bk. Reg. 20; Re Heller, 5 Bk. Reg. 46; Re Carson, id. 290; Re Perry, 1 Am. L. T. Bk. 4; Matt. of Malcom, 4 Law Rep. 488; Matt. of Plimpton, id. 488; Matt. of Frisbee, id. 483; Matt. of Hill, 5 Law. Rep. 326; Matt. of Oakley, id. 327.

No. XXXIV.

Proof of debts.—Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a copartnership, it must appear on oath that the deponent is a member of the creditor firm; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, and the corporation has no such officer as cashier or treasurer, the deposition may be made by the officer whose duties most nearly correspond to those of cashier or treasurer. Depositions to prove debts existing in open account shall state when the debt became or will become due; and, if it consists of items maturing at different dates, the average due date shall be stated, in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any assignee shall be delivered to the register to whom the cause is referred. The register may decline to file any deposition until the fee for filing the same is paid. When a proof of debt is sent by mail to the register, and it shall be accompanied by the fee for filing it, and the fee for sending a notice to a creditor, the register shall acknowledge the receipt of it, and state the amount at which he has entered it, and if it shall be insufficient or unsatisfactory to the register, he shall state the reason.

Any creditor may file with the register a request that all notices to which he may be entitled shall be addressed

to him at any place, to be designated by the post-office box or street number, as he may appoint, and thereafter and until some other designation shall be made by such creditor, all notices shall be so addressed; and in other cases notices shall be addressed as specified in the proof of debt.

Claims which have been assigned before proof shall be supported by a deposition of the owner at the time of the commencement of proceedings, setting forth the true consideration of the debt, and that it is entirely unsecured, or, if secured, such deposition shall set forth the security, as is required in proving secured claims.

Upon filing with the register satisfactory proof of the assignment of a claim proved and entered on the register's docket, the register shall immediately give notice by mail, to the original claimant, of the filing of such proof of assignment.

And if no objection be entered within ten days, he shall make an order subrogating the the assignee to the original claimant.

If objection be made within the time specified, or within such further time as may be granted for that purpose, the register shall certify the objection into court for determination. The claims of persons contingently liable for the bankrupt may be proved in the name of the creditor, when known by the party contingently liable.

When the name of the creditor is unknown, such claims may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish, pro tanto, the original debt. The execution of any letter of attorney to represent a creditor, or of an assignment of claim after proof, or of the consent of a creditor to a bankrupt's discharge, may be proved or acknowledged before a register in bankruptcy, or a United States circuit court commissioner. When executed on behalf of a copartnership, or of a corporation, the person executing the instrument shall make oath that he is a member of the firm, or duly authorized officer of the corporation, on whose behalf he acts.

When the party executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

When the assignee or any creditor shall desire the re-examination of any claim filed against the bankrupt's

estate, he may apply by petition to the register to whom the cause is referred, for an order for such re-examination; and thereupon the register shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail, addressed to the creditor.

At the time appointed, the register shall take the examination of the creditor, and of any witnesses that may be called by either party; and if it shall appear from such examination that the claim ought to be expunged or diminished, the register, if no objection be made, may order accordingly. If objection be made, the register shall require the parties then, or within a time to be fixed for that purpose, to form an issue to be certified into court for determination.

If the petitioner is in default in making up said issue, the petition shall be dismissed; if the creditor whose claim is re-examined is in default in making said issue, the claim may be diminished or expunged by the register.

All orders thus made by the register may be reviewed by the court on special petition, and upon showing satisfactory cause for such review.

What debts may be proved, *Re Frear*, 2 Ben. 467; *Re Clough*, id. 508; *Re Lathrop*, 3 Ben. 490; *Re Rosenberg*, id. 14; *Sigsby v. Willis*, id. 371; *Re Brown*, 5 Ben. 1; *Re Lathrop*, id. 199; *Re Cram*, 1 Bk. Reg. 132; *Re Frost*, 3 id. 180; *Re Whittaker*, 4 Bk. Reg. 41; *Re Mansfield*, 6 Bk. Reg. 383; *Re Dunkle*, 7 id. 107; *Re Forsyth*, 7 Bk. Reg. 174; *Stephenson v. Jackson*, 9 Bk. Reg. 255; *Re Long*, id. 227; *Re Weaver*, id. 132; *Re Morrill*, 8 Bk. Reg. 117; *Re Rosey*, id. 509; *Re Bugbee*, 9 Bk. Reg. 258; *Re Jones*, id. 556; *Matt. of Houghton*, 5 Law. Rep. 321; *Matt. of Comstock*, id. 163; *Rankin v. Florida R. B. Co.*, 1 Am. L. T. Bk. 85; *Mead v. National Bk.*, 7 Am. L. R. N. S. 818; *Re Blandin*, Low. 543; *Re Bradley*, 2 Biss. 515. When and by whom made, *Re Patterson*, 1 Ben. 448; *Re Bigelow*, 3 Ben. 198; *Re Deane*, 2 id. 29; *Re Murdock*, 3 Bk. Reg. 86; *Re Herrman*, 3 Bk. Reg. 163; *Re Bakewell*, 4 Bk. Reg. 199; *Re Blandin*, 5 Bk. Reg. 39; *Re Howard*, 6 Bk. Reg. 372; *Emery v. Canal N. Bk.*, 7 Bk. Reg. 217. How proved, *Re Phelps*, 1 Bk. Reg. 139; *Re Knoepfel*, id. 398; *Re Elder*, 3 id. 165; *Foster v. Remick*, 5 Law. Rep. 406; *Dutton v. Freeman*, id. 447; *Re Fortune*, Low. 384. Notary public, *Re Strauss*, 2 Bk. Reg. 18; but see opinion of *Blatchford J.*, 7 Chicago Legal News 235.

NO. XXXV.

TRIAL BEFORE MARSHAL.

If the debtor, under the provisions of section fourteen of the amendatory act relating to proceedings in bankruptcy,

approved June 22d, 1874, shall elect to have a trial of the facts before the marshal, he shall make such election in writing, and file the same with the clerk of the court; and thereupon the court, on application of the debtor, may award the venire facias in said section prescribed, upon and by virtue of which the marshal shall summon twenty-four good and lawful men, inhabitants of the vicinity of the place of trial, and indifferent between the parties, from whom to select a jury to try the said facts; and the names of the persons so summoned shall be drawn by lot to make the said jury, and each party shall be entitled to challenge four persons peremptorily; and if a sufficient number of jurors unchallenged and free from exception shall not appear to make the full panel of twelve men (or such less number as the parties may agree upon) to try the said cause, the marshal shall complete the number by forthwith summoning other proper persons for the purpose. And any person summoned by the marshal to sit on said jury, and failing to appear without sufficient excuse, shall be returned by the marshal and subject to be fined by the court.

The petitioning creditor shall be deemed the actor, give due notice of trial, and have the opening and close before the jury. Subpoenas may be issued to witnesses, and objections to evidence shall be decided by the marshal presiding at the trial, subject to review by the court. The trial shall be had upon the petition to have the debtor declared a bankrupt, and no other pleadings shall be necessary. The debtor may, on his part, prove any fact or state of facts which will entitle him to have the case dismissed. The jury, if desired, shall find a special verdict upon any point or question of fact stated for that purpose in writing by either party before the case shall have been submitted to them. The verdict shall be signed by the foreman of the jury and countersigned by the marshal, who shall immediately return the same to the court with the venire, and any points or questions raised and decided by him at the trial. The court, for good and legal cause shown, may set aside the verdict and award a new venire as often as occasion shall require.

No. XXXVI.

**COMPOSITION UNDER SECTION SEVENTEEN
OF AMENDATORY ACT.**

If at any time after the filing of a petition for an adjudication in bankruptcy, a petition, duly verified, be filed by the debtor or bankrupt, or by any creditor of such debtor or bankrupt, setting forth that a composition has been proposed by such debtor or bankrupt, and that he verily believes that such proposed composition would be accepted by a majority in number, and three-fourths in value of the creditors of such debtor or bankrupt, in satisfaction of the debts due from such debtor or bankrupt, the court shall forthwith order a meeting of the creditors to be called to consider of the said proposition as provided in the seventeenth section of the said amendatory act, whereupon such proceedings shall be had as are therein directed. The register acting in the case, or, if no register has been assigned, a register to be designated by the court, shall, at the time and place specified in the notice for holding such meeting, hold and preside at the same, and report to the court the proceedings thereof, with his opinion thereon; upon the filing of which, the clerk shall give the notices to creditors required by said section, and the court shall, at the time therein fixed, proceed to hear and determine the matter as in said section is prescribed.

In like manner, additional meetings in relation to such proposed composition, or any modification thereof, may, upon like application, be called and held, and the proceedings returned in like manner. In re Reeman, 12 Blatchf. 562.

No. XXXVII.

REFERENCE TO SECTIONS OF ACT, ETC.

All orders referring specifically to any section or sections of the original bankrupt act, shall be deemed and construed to refer to the corresponding sections, respectively, in the Revised Statutes of the United States; for example, Order IX, in referring to sections 12 and 13 of the act, shall be construed to refer to sections 5033 and 5034, respectively, of the Revised Statutes; and so of the rest. And all forms heretofore prescribed shall be adapted to any modification of the law, or of these orders.

Report of Marshal.

Annual report of....., marshal of the
.....district of.....for the year ending
June 30, 18.., required by the nineteenth section of the
amendatory act of Congress, relating to matters of bank-
ruptcy, approved June 22d, 1874.

Number of cases in bankruptcy in which warrants
were received.....
Number of warrants returned during year.....
Fees for service of warrants so returned.....
Fees for serving creditors with notice.....
Mileage thereon.....
Expenses of publication thereon.....
Expenses of postage thereon.....
Other expenses thereon, such as for.....

Other fees, costs, expenses, and emoluments, namely :

For service-fees for serving writs and process.....
For mileage thereon.....
For serving notices.....
For mileage thereon.....
Expenses of publication thereon.....
Expenses of postage thereon.....
For making inventories of property.....
For taking care of property.....
Expenses and disbursements thereon.....

All other fees and emoluments, such as for :

All other expenses and disbursements, such as for :

SUMMARY OF FEES, COSTS, AND EMOLUMENTS, EXCLUSIVE OF ACTUAL DISBURSEMENTS.

Service fees.....
Mileage.....
Making inventories.....
Care of property.....
Other fees and emoluments in bankruptcy.....

SUMMARY OF ACTUAL DISBURSEMENTS.

For publications.....
 For postage.....
 For custody of property.....
 For traveling expenses.....
 For other expenses, such as.....

Report of Register.

Annual report of....., register,
 in bankruptcy in and for the.....district of
 the State and district of....., for the year ending
 June 30th, 18.., in pursuance of section 19 of the amend-
 atory act relating to proceedings in bankruptcy, approved
 June 22d, 1874.

Number of cases of voluntary bankruptcy referred. . .
 Amount of assets of the bankrupts therein.....
 Amount of liabilities of the bankrupts therein.....
 Amount of dividends declared therein.....
 Average rate per cent. of dividends declared therein.
 Number of cases in which discharge granted.....
 Number in which discharge not granted.....
 Number of compulsory cases referred.....
 Amount of assets of the bankrupts therein.....
 Amount of liabilities of the bankrupts therein.....
 Amount of dividends declared therein.....
 Average rate per cent. of dividends declared therein.
 Number of cases in which discharge granted.....
 Number in which discharge not granted.....
 Amount of fees, costs, etc., received or earned in cases
 of voluntary bankruptcy.....
 Amount of fees, costs, etc., received or earned in cases
 of involuntary bankruptcy.....

Report of Clerk, No. 1.—Annual statement of.....
, clerk of the district court of the United States for
 the district of....., for the year ending June 30th,
 18.., in pursuance of section 19 of the amendatory act
 relating to proceedings in bankruptcy, approved June 22d,
 1874, of all cases of bankruptcy pending, etc.

Cases pending at beginning of year. Names of bankrupts.	Whether disposed of.	Amount of dividend.	Number of reports of assignee.	Disposition of case.	Number of assignee's accounts filed and settled.
Cases begun during the year.					

Report of Clerk, No. 2.—Names and residences of all marshals, registers, and assignees who have failed to make and file reports, as required by section 19 of amendatory act relating to proceedings in bankruptcy, for the year ending June 30, 18.., furnished in pursuance of said section.

MARSHAL.

[Here insert names and residences of delinquents.]

REGISTERS.

[Here insert names and residences of delinquents.]

ASSIGNEES.

[Here insert names and residences of delinquents.]

Report of Clerk, No. 3.—Annual report of....., clerk of the district court of the United States for the district of....., for the year ending June 30th, 18.., of all his fees, charges, costs, and emoluments earned or accrued in bankruptcy cases during said year; and also of all moneys paid into and disbursed out of court in bankruptcy, and the balance in hand or on deposit, made in pursuance of section nineteen of the amendatory act relating to proceedings in bankruptcy, approved June 22d, 1874.

Services.**Amount.**

For performing all ordinary duties of clerk, such as issuing process, filing and entering papers, orders, rules, etc., in bankruptcy cases.....	
For entering memoranda or minutes of registers..	
For giving notice to creditors by mail or publication, (exclusive of postage and cost of publication)	
For taxing costs.....	
For receiving, keeping, and paying out money...	
For taking examinations.....	
For preparing and certifying papers on appeal to circuit court	

Moneys received in court in cases in bankruptcy..
 Balance on hand at beginning of year.....
 Moneys paid out of court in cases in bankruptcy..
 Balance on hand at end of year.....
 Balance on deposit at end of year.....

ADDENDA.

TERMS OF COURTS.

The terms of circuit and district courts have been amended as follows:

ALABAMA.

§ 6. That terms of the circuit and district courts for the several districts of Alabama shall be held as follows: For the southern district, the terms of the circuit and district courts shall commence on the fourth Monday of December and the first Monday of June in each year; for the middle district, on the first Monday of May and the first Monday of November in each year; for the northern district, on the first Monday of April and the second Monday of October in each year.

Act June 22d, 1874, 43d C., 1st Sess., p. 195.

CALIFORNIA, OREGON, AND NEVADA.

That a term of the Circuit Court of the United States, for the districts of California, Oregon, and Nevada, shall be held as follows, namely: For the district of California, on the first Monday of February, second Monday of July, and fourth Monday of November, in each year. For the district of Oregon, on the second Monday of April and the first Monday of October in each year; and for the district of Nevada, on the third Monday of March and the first Monday of November, in each year. [Approved February 18th, 1876, 19 U. S. Stats.]

IOWA.

Instead of the times now fixed by law, the terms of the district courts of the United States for the district of Iowa, to be held in the city of Keokuk and the city of Council Bluffs, shall commence at Keokuk on the third Tuesday of January and the third Tuesday of June, and at Council Bluffs on the fourth Monday of March and the fourth Monday of September in each year.

Act of February 9th, 1874, 43d C., 1st Sess., p. 15.

INDIANA.

The terms of the circuit and district courts of the United States for the district of Indiana, which are provided by law to be holden at the city of Evansville, shall hereafter be held at that city on the first Mondays of April and October in each year.

Act of June 23d, 1874; 43d C., 1st Sess., p. 251.

VERMONT.

The term of the circuit court holden at Rutland on the third day of October shall be held on the first Tuesday in October, and the term of the district court holden at Rutland on the sixth day of October shall be held on the first Tuesday of October. The term of the circuit court holden at Windsor on the fourth Tuesday in July shall be held on the third Tuesday in May, and the term of the district court held at Windsor on the Monday after the fourth Tuesday of July shall be on the third Tuesday in May: *Provided*, That this act shall not apply to the next terms of the circuit and district court to be holden at Windsor, but the same shall be held at the times now provided by law.

Approved June 14th, 1874, 43d C., 1st Sess., p. 53.

WISCONSIN.

The time of holding the circuit and district courts of the United States, for the eastern district of Wisconsin, at Oshkosh, be on the second Tuesday of July of each year, instead of the first Monday of July.

Approved June 16th, 1874, 43d C., 1st Sess., p. 75.

RESIDENCE OF OFFICERS.

§ 2. That every clerk of the circuit or district court of the United States, United States marshal, or United States district attorney, shall reside permanently in the district where his official duties are to be performed, and shall give his personal attention thereto; and in case any such officer shall remove from his district, or shall fail to give personal attention to the duties of his office, except in case of sickness, such office shall be deemed vacant: *Provided*, That in the southern district of New York said officers may reside within twenty miles of their districts.

§ 3. That no civil officer of the Government shall hereafter receive any compensation or perquisites, directly or indirectly, from the treasury or property of the United States beyond his salary or compensation allowed by law: *Provided*, That this shall not be construed to prevent the employment and payment, by the Department of Justice, of district attorneys, as now allowed by law, for the performance of services not covered by their salaries or fees.

43d C., 1st Sess., p. 109.

AN ACT

REGULATING FEES AND COSTS, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Accounts of officers, vouchers, etc.—That before any bill of costs shall be taxed by any judge or other officer, or any account payable out of the money of the United States shall be allowed by any officer of the Treasury, in favor of clerks, marshals, or district attorneys, the party claiming such account shall render the same, with the vouchers and items thereof, to a United States circuit or district court, and, in presence of the district attorney or his sworn assistant, whose presence shall be noted on the record, prove in open court, to the satisfaction of the court, by his own oath or that of other persons having knowledge of the facts, to be attached to such account, that the services therein charged have been actually and necessarily performed as therein stated; and that the disbursements charged have been fully paid in lawful money; and the court shall thereupon cause to be entered of record an order approving or disapproving the account, as may be according to law, and just. United States commissioners shall forward their accounts, duly verified by oath, to the district attorneys of their respective districts, by whom they shall be submitted for approval in open court, and the court shall pass upon the same in the manner aforesaid. Accounts and vouchers of clerks, marshals, and district attorneys, shall be made in duplicate, to be marked respectively "original" and "duplicate." And it shall be the duty of the clerk to forward the original accounts and vouchers of the officers above specified, when approved, to the proper accounting officers of the Treasury, and to retain in his office the duplicates, where they shall

be open to public inspection at all times. Nothing contained in this act shall be deemed in anywise to diminish or affect the right of revision of the accounts to which this act applies by the accounting officers of the Treasury, as exercised under the laws now in force.

§ 2. **Additional bonds.**—That whenever the business of the courts in any judicial district shall make it necessary, in the opinion of the Attorney-General, for the clerk or marshal to furnish greater security than the official bond now required by law, a bond in a sum not to exceed forty thousand dollars shall be given, when required by the Attorney-General, who shall fix the amount thereof.

§ 3. **Bonds of clerks.**—That the clerks of the Supreme Court and the circuit and district courts respectively, shall each, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court for which he is appointed, to the United States, in the sum of not less than five and not more than twenty thousand dollars, to be determined and regulated by the Attorney-General of the United States, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court of which he is clerk; and it shall be the duty of the district attorneys of the United States, upon requirement by the Attorney-General, to give thirty days' notice of motion in their several courts that new bonds, in accordance with the terms of this act, are required to be executed; and upon failure of any clerk to execute such new bonds, his office shall be deemed vacant. The Attorney-General may at any time, upon like notice through the district attorney, require a bond of increased amount, in his discretion, from any of said clerks, within the limit of the amount above specified; and the failure of the clerk to execute the same shall in like manner vacate his office. All bonds given by the clerks shall, after approval, be recorded in their respective offices, and copies thereof from the records, certified by the clerks respectively, under seal of court, shall be competent evidence in any court. The original bonds shall be filed in the Department of Justice.

§ 4. **Mandamus to officers.**—That the circuit courts of the United States, for the purposes of this act,

shall have power to award the writ of mandamus, according to the course of the common law, upon motion of the Attorney-General or the district attorney of the United States, to any officer thereof, to compel him to make the returns and perform the duties in this act required.

§ 5. Failure to make report—Removal.—That if any clerk of any district or circuit court of the United States shall willfully refuse or neglect to make any report, certificate, statement, or other document required by law to be by him made, or shall willfully refuse or neglect to forward any such report, certificate, statement, or document to the department, officer, or person to whom, by law, the same should be forwarded, the President of the United States is empowered, and it is hereby made his duty, in every such case to remove such clerk so offending from office by an order in writing for that purpose. And upon the presentation of such order, or a copy thereof, authenticated by the Attorney-General of the United States, to the judge of the court whereof such offender is clerk, such clerk shall thereupon be deemed to be out of office, and shall not exercise the functions thereof. And such district judge, in the case of the clerk of a district court, shall appoint a successor; and in the case of the clerk of a circuit court, the circuit judge shall appoint a successor. And such person so removed shall not be eligible to any appointment as clerk or deputy clerk for the period of two years next after such removal.

§ 6. Refusal to make report.—That if any clerk mentioned in the preceding section shall willfully refuse or neglect to make or to forward any such report, certificate, statement, or document therein mentioned, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, in the discretion of the court; but a conviction under this section shall not be necessary as a condition precedent to the removal from office provided for in this act.

§ 7. Mileage.—That the proviso in the sixth paragraph of the act entitled "An act making appropriations for the support of the army for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes," approved June sixteenth, eighteen hundred

and seventy-four, shall not be construed to apply, or to have applied, to attorneys, marshals, or clerks of courts of the United States, their assistants or deputies. And all accounts of said attorneys, marshals, and clerks, for mileage and for expenses incurred subsequent to the first day of July, eighteen hundred and seventy-four, and prior to the first day of January, eighteen hundred and seventy-five, shall and may be audited, allowed, and paid at the Treasury Department of the United States in the same manner as if said act had not been passed. And from and after the first day of January, eighteen hundred and seventy-five, no such officer or person shall become entitled to any allowance for mileage or travel not actually and necessarily performed under the provisions of existing law.

§ 8. Repeal.—That all acts inconsistent with the provisions of this act are hereby repealed.

Approved February 22d, 1875, 43d C., 1st Sess., pp. 332 334.

AN ACT

TO PROTECT ALL CITIZENS IN THEIR CIVIL AND LEGAL RIGHTS.

WHEREAS, it is essential to just government, we recognize the equality of all men before the law, and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice to all, of whatever nativity, race, color, or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled :

Equal enjoyment.—That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement, subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

§ 2. Forfeiture, punishment, remedies.—That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt, with full costs; and shall also, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined

not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year: *Provided*, That all persons may elect to sue for the penalty aforesaid, or to proceed under their rights at common law and by State statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this proviso shall not apply to criminal proceedings, either under this act or the criminal law of any State: *And provided further*, That a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively.

§ 3. Jurisdiction, prosecution. — That the district and circuit courts of the United States shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses against, and violations of, the provisions of this act; and actions for the penalty given by the preceding section may be prosecuted in the territorial, district, or circuit courts of the United States wherever the defendant may be found, without regard to the other party; and the district attorneys, marshals, and deputy marshals of the United States, and commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting and imprisoning, or bailing offenders against the laws of the United States, are hereby specially authorized and required to institute proceedings against every person who shall violate the provisions of this act, and cause him to be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States, or territorial court, as by law has cognizance of the offense, except in respect of the right of action accruing to the person aggrieved; and such district attorneys shall cause such proceedings to be prosecuted to their termination as in other cases; *Provided*, That nothing contained in this section shall be construed to deny or defeat any right of civil action accruing to any person, whether by reason of this act or otherwise; and any district attorney who shall willfully fail to institute and prosecute the proceedings herein required, shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action of debt, with full costs, and shall,

on conviction thereof, be deemed guilty of a misdemeanor, and be fined not less than one thousand, nor more than five thousand dollars; *And provided further*, That a judgment for the penalty in favor of the party aggrieved against any such district attorney, or a judgment upon an indictment against any such district attorney, shall be a bar to either prosecution respectively.

§ 4. **Service as jurors.**—That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude; and any officers or other person charged with any duty in the selection or summoning of jurors, who shall exclude or fail to summon any citizen for the cause aforesaid, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars.

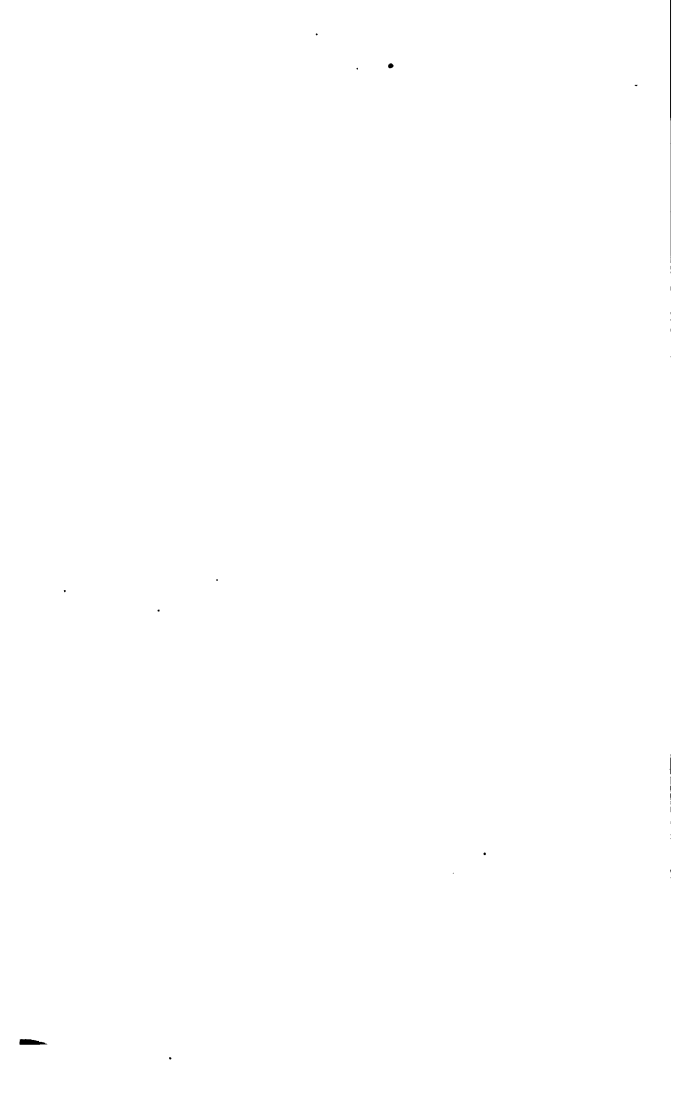
§ 5. **Review by Supreme Court.**—That all cases arising under the provisions of this act in the courts of the United States shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are now provided by law for the review of other causes in said court.

Approved March 1st, 1875, 43d C., 1st Sess., pp. 335-337.

An Act to provide for the appointment of commissioners for taking affidavits, etc., for the Courts of the United States. [Enacting clause] That notaries public of the several States, Territories, and the District of Columbia, be and they are hereby authorized to take depositions, and do all other acts in relation to taking testimony to be used in the Courts of the United States, take acknowledgments and affidavits, in the same manner and with the same effect as commissioners of the United States Circuit Court may now lawfully take or do. [Approved August 15th, 1876, 19 U. S. Stats, 206.]

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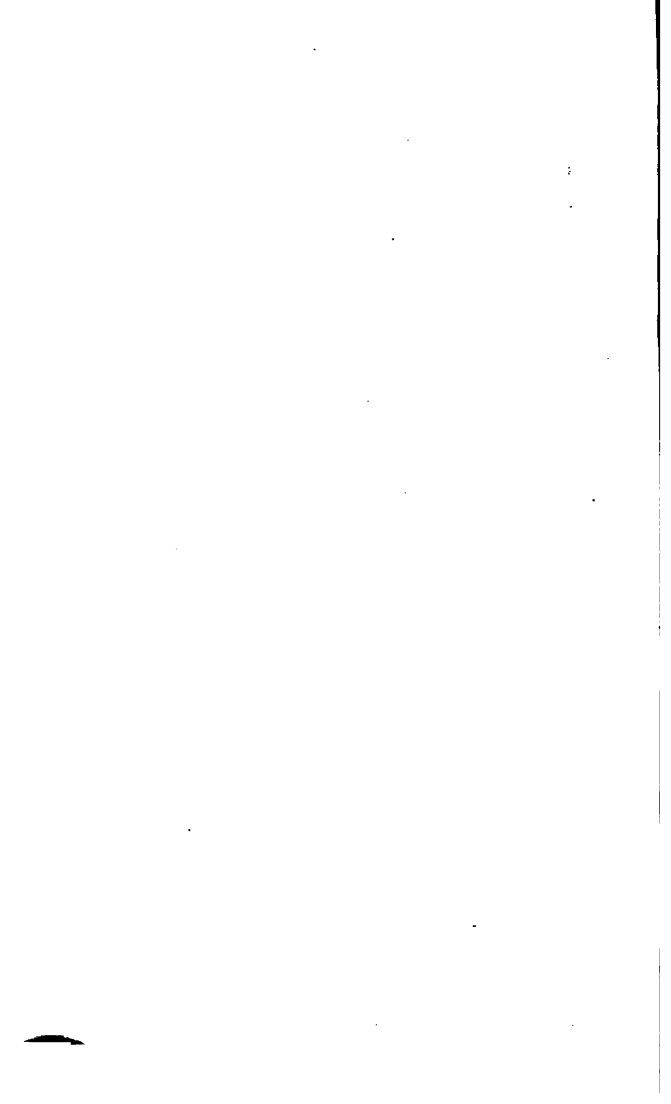
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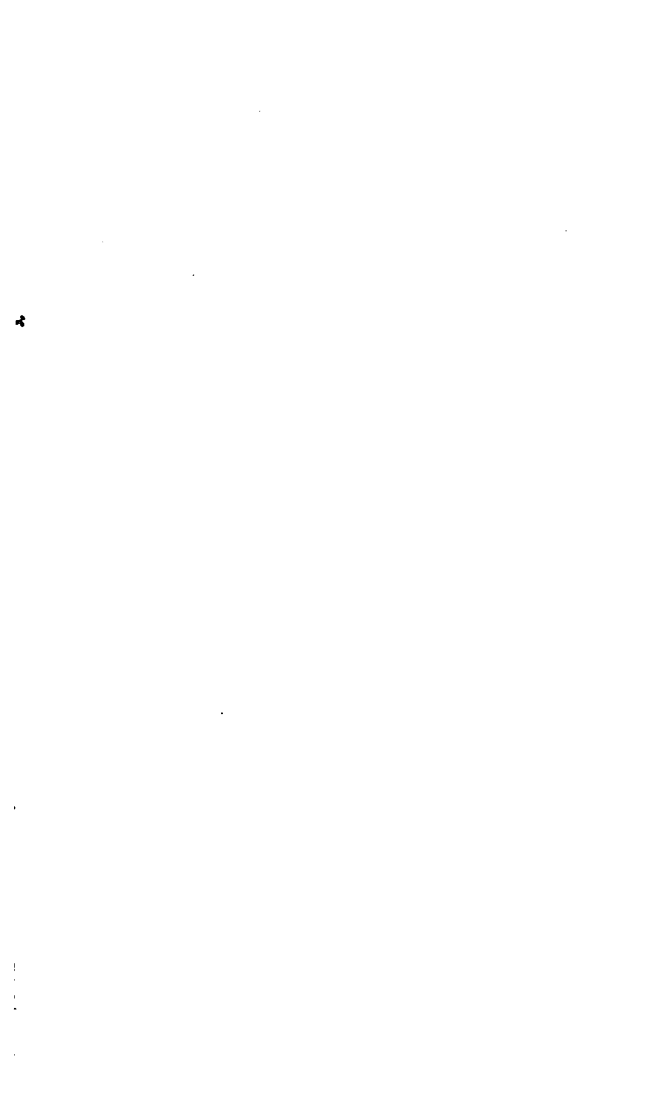
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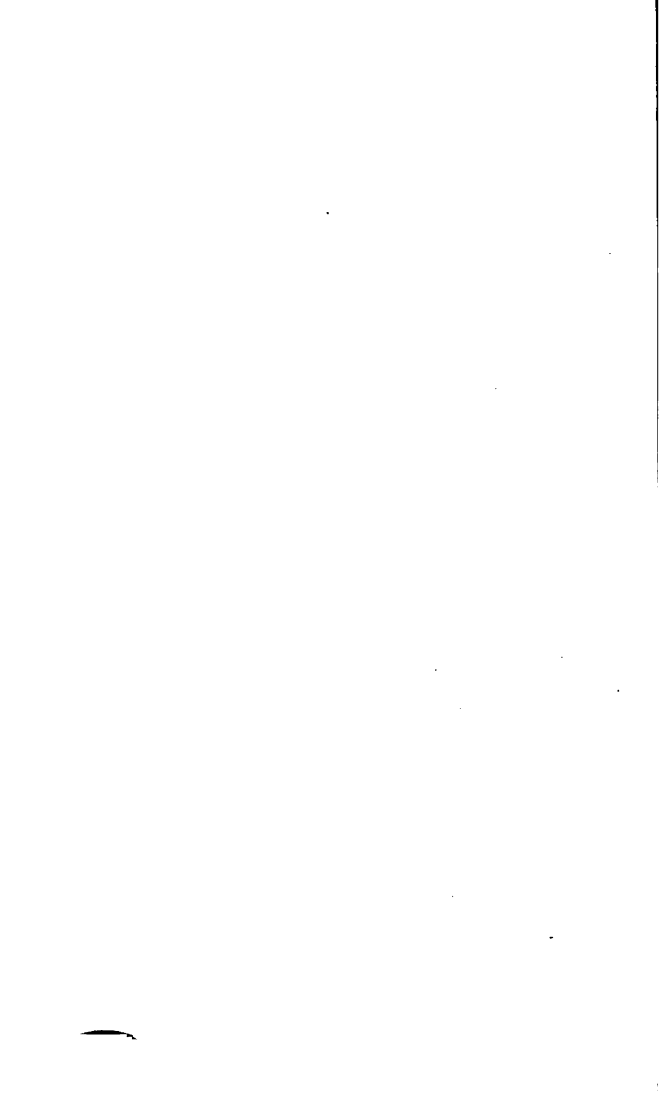
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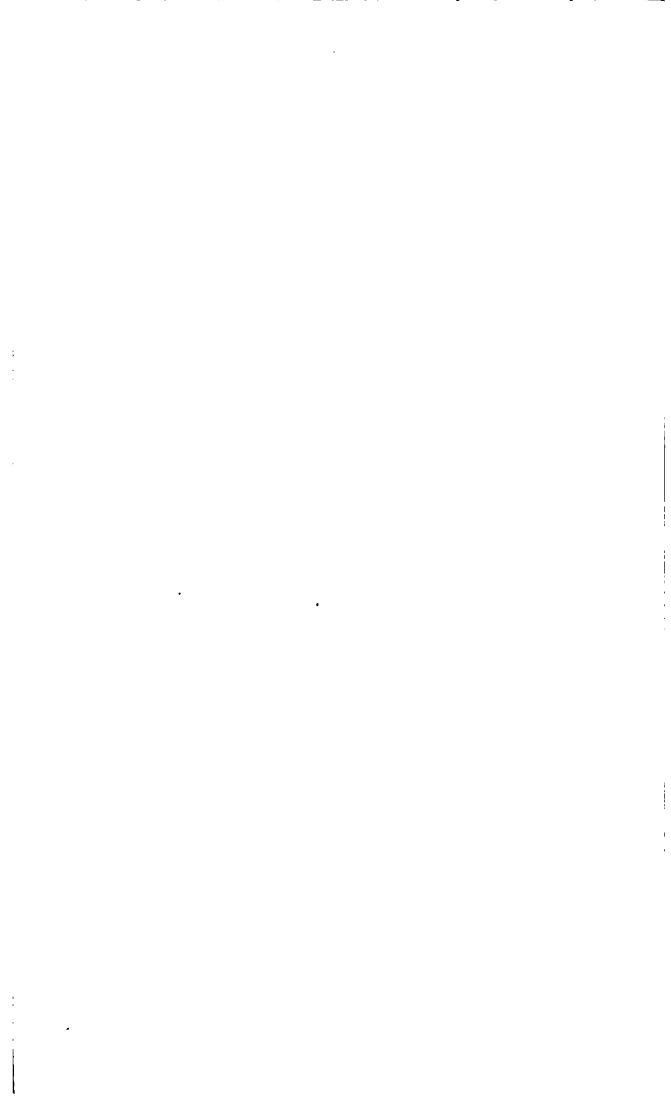
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